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Eindhoven

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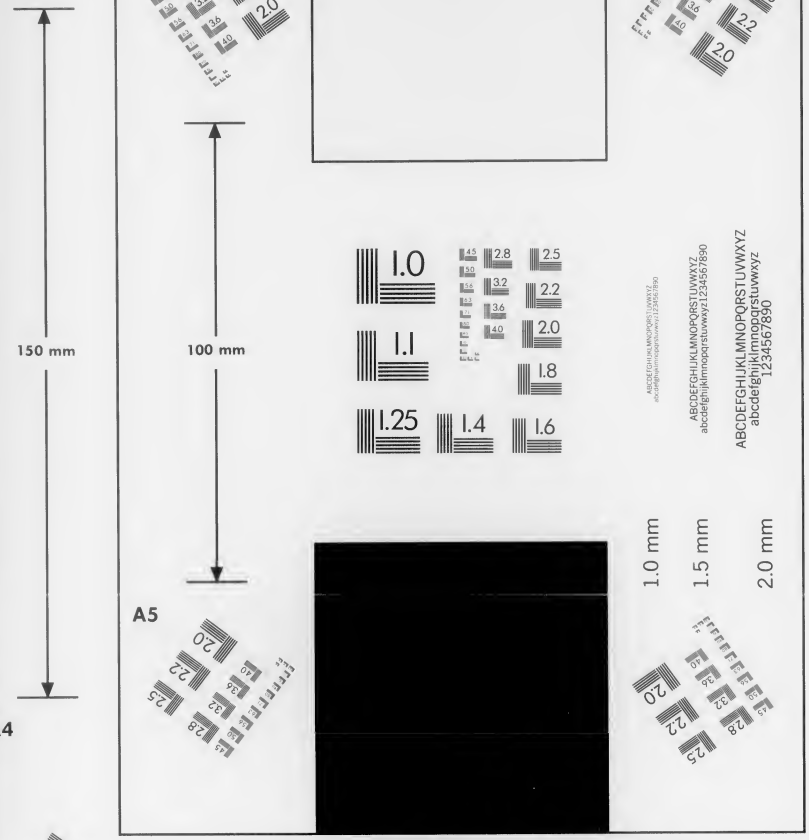

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NATURAL JUSTICE
and
PRIVATE PROPERTY

Dissertation

presented to the Faculty of Philosophy of the
CATH. UNIVERSITY OF AMERICA (Washington)
in partial fulfilment of the requirements for the
degree of Doctor of Philosophy

By Rev. DANIEL MERINO B.
(of Santiago, Chile)

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INTRODUCTORY CHAPTER

IMPORTANCE OF THIS SUBJECT

In the strife which is rending modern society, and which daily arrays labor against capital and employees against employers, there is a nobler cause, deeper, and stronger than the selfish interests that appear to be at issue upon the surface. At the bottom of this great agitation which is stirring the peoples, there is a universal desire for justice, which is but the inevitable result of twenty centuries of Christianity, coupled with a conviction, ever growing more widespread, owing to the quick dispersion of ideas wrought out by progress, that there is something fundamentally unjust in the social organism in which we live. For the honor of humanity, be it said, in spite of its detractors, who make it appear like a pack of animals governed by mere appetites, the truth is that the great evolutions of history have never been merely the effect of economic convenience, except as the latter has been shown to the people posing under the mantle of justice. Karl Marx himself, for instance, who denies the influence of moral forces in the history of humanity, avails himself of them as the most powerful means for influencing contemporary revolution. In fact, he does not try to seduce the multitudes by whetting their economic appetites with the description of the prosperity and abundance of the future

socialistic society; rather he excites their moral feelings by trying to prove to them mathematically the great injustice of which they are victims in society now, and still further, by endeavoring to show them that the capitalistic social order is so essentially unjust that even its most flagrant wrongs are held to be just. Although Marx denies it, the truth is that this is the very thought which fills the pages of his book and which is the secret of its enormous influence in the social movement which is shaking the world. My personal experience in dealing with revolutionary propagandists has wrought in me the conviction that even agitators of the worst kind have at heart a sincere desire for justice and an assured conviction of the sanctity of their cause, which excuses them to their own consciences, at least partially, in resorting even to the most violent and unrighteous means. The passion for justice is today more than ever the passion of the people; hence that tendency in popular discussions to consider the ethical aspect of things, of which Henry George says:

"*It springs from a law of the human mind; it rests upon a vague and instinctive recognition of what is probably the deepest truth we can grasp. That alone is wise which is just, that alone is enduring which is right.*" (1)

Hence the immense importance attached today to the study of social questions from their moral aspect, and the great influence that this kind of study may have on the direction as well as in the violence of popular currents. Moreover, as we believe firmly in the saying of the Divine Master, "*Quaerite justitiam et alia omnia adjicientur vobis,*" it seems to us that all that can be done to understand the demands of justice in the economic order and to discover the means of realizing them, is at one and

(1) "Progress and Poverty", p. 239.

the same time, the surest road to attain human welfare and the common good.

In this dissertation we will briefly examine the significance of this aspiration of the human soul, which we call justice, and we will try to determine what are its most fundamental requirements relative to the distribution of wealth among the individuals composing the social organism.

IDEA OF JUSTICE

If we give the word justice a significance ample enough to cover all the opinions regarding it, so that it may correspond to that rather vague universal aspiration attached to this word, we may say that what every one understands by the word justice is "to give to each one what is his own", *unicuique suum.* This is a resume of the definition that the Scholastics took from Ulpian: "Justitia est perpetua et constans voluntas jus suum unicuique tribuendi", (1) and has the advantage, as a point of departure of our essay, that its very generality places it outside all discussions and allows us to build upon a foundation which is accepted by all. It is true that the vagueness of the formula *unicuique suum* makes it susceptible to the most diverse interpretations and the most contradictory applications; but this is no objection, as the object of this work is precisely to ascertain which of these interpretations is legitimate, and which among these applications are the correct ones.

The first word of the Latin formula *unicuique suum*, in these days offers no difficulty, as since the abolition of slavery no one doubts that *unicuique* (to each one) applies to every human being, without distinction of sex or condition. The whole difficulty lies

(1) St. Thomas, "Summa Theologica", 2da, 2dae, Q. 58. a. 1.

in the second word, in that *suum* (his own), which St. Chrysostom would call "a chilling word", as no reason is apparent why he should give it other qualification than that he gave to its brothers *meum* and *tuum*. (2) In this word *suum* there is room for all opinions, as it admits of the most varied interpretations. Here we need note that in every instance it signifies *something*, and under all circumstances this formula implies that there is *something* belonging to every inidvidual, or that each individual has *something* of his own that must be recognized as such.

According to Karl Marx, this something which is due to each individual. has nothing essential or invariable, it is only what conforms to the system of production prevailing in society. But Marx must confess that this is not the sense in which the rest of humanity uses the word justice, inasmuch as the productive systems themselves, as the state and any other social organization, are regarded by people as just or unjust, according as they do or do not give to each person that "something" to which he has a right. Hence common sense recognizes that each individual has "something" of his very own, that must be respected by every state and by every economic system, in order to meet that exigency of the human soul which we call justice; that that "something" belongs to every man because of the fact of his being a man; that the right to this "something" of his own is prior to and superior to rights created by the state, for when states do not respect that right, they themselves are unjust.

HUMAN PERSONALITY

This idea of justice is founded in one of those instinctive conceptions, not to be demonstrated as

(2) P. G., Vol. 62 p 563.

a rule, which are like the corner stones of our mental structure, that with greater or less vigor exist in the minds of all men and control their judgment, both in those who recognize their existence and in those who persist in denying it; so is also the idea of free will and that instinctive conviction that each one of us lives primarily for himself. Those instinctive conceptions, being only the resoundings of the voice of nature or its Author in our hearts, are the ultimate foundation of all truth and right. They support our reason, but our reason can go back to them and explain their existence by revealing their harmony with the rest of creation. In regard to this instinctive belief in self-personality, or that each of us lives for himself, or is an *end in himself*, reason and also faith, for all of us are Christians, give us the following explanation, which I take from the book "Private Ownership" of Fr. J. Kelleher, wherein common philosophy upon this is reflected (1):

"We can here perceive the reason for and the meaning of the doctrine that man is an end in himself. To pursue his own course under the direction of the moral law which God has given him together with his reason, is man's end in this life. This end naturally belongs to every man, since every man is free by nature. The responsibility for carrying it out according to the circumstances in which he is placed, is purely a personal matter between each man and his Creator. No one else can do it for him. His end is absolutely his own. It is not the end of the race, of society, or of a nation. It may be that in working out his own end, a particular individual may find it neccessary to serve others or to promote the good of society. But even in such a case, man's personal independence and responsibility remain

(1) "Private Ownership" p. 52. Dublin 1911.

and his services of others is something merely accidental." (2)

Belief in the existence of God and the immortality of the human soul is not necessary for the recognition of that instinct which makes man believe in the reality of his essential rights, or that he has something which no one can take away from him without being guilty of injustice; but the moral force of this instinct must be explained by that belief, so as to give some logical significance to the words justice and right. The conception of right likewise presumes equality and independence among men; for it is impossible to imagine a person who belongs to another, having any right, at least in so far as he belongs to the second. As our present writing takes for granted that there are just and unjust things, since we are trying to see whether the main provisions of our economic system are one or the other, it is natural also for us to accept those other moral ideas referred to in the paragraph quoted from Fr. Kelleher, and which are included in the conception of justice, if the latter, as common sense dictates, is something besides convenience or utility. We see then, that the idea that everybody *ought*, as a moral obligation, to give to each one what is *his own*, implies independence and freedom of the human being, as well as his sacred dominion over *something that belongs to him* by an ordinance of nature herself; for *it is his*, even though individuals or governments may attempt to despoil him. To ascertain what this *something* is, in regard to private ownership, is the principal object of this work.

(2) See A. Castelein, "Instit. Philosophiae Moralis et Socialis" pp. 195 and 208. Brussels 1899.

Part I

NATURAL JUSTICE AND THE ORIGIN OF PRIVATE PROPERTY

CHAPTER I

OCCUPATION

PRIMITIVE PRIVATE OWNERSHIP AND CIVIL SOCIETY

If we are seeking something that has been conferred by nature upon each individual, to the exclusion of his fellowmen, we will find that it is the being himself, the body, and the use of its faculties, primitive private property being reduced to this. Man has also by nature the right to use external things and as many things can be used by but one individual at a time, it is deduced that man has a right to exclude others from the things he is using, when otherwise the natural use of them is impossible: but this is not a right of *private ownership*, but of *private use*. If anybody observes, with Aristotle and St. Thomas (1), that the ordained, peaceful and beneficial use of external things implies private ownership, we cannot deny it, though the collectivists may do so; but we reply that such fact does not immediately prove that man has by nature the right of ownership over something external, but only that he has by nature the right to acquire ownership over those external things for the rational use of which ownership may be necessary. It is deduced therefore that nature must have given

(1) " Summa Theologica ", 2da. 2dae: Q. 66, A. 2.

men the possibility of acquiring this ownership through some adequate method. What is that method? Was it established by nature itself, or was its institution left to the free agreement among men?

We remark here that from the necessity of private property for human life, as asserted by St. Thomas, it cannot be deduced that nature has necessarily provided men with an adequate and determined method of acquiring such a property, independently of civil society, viz. the mutual agreement of individuals tending to the common good.

For this mutual agreement for the common good, or civil society, being as natural to mankind as the necessity for private ownership, it is not to be wondered at, that one cannot exist without the other. But, since ***nemo dat quod non habet***, how is it possible that an agreement among people who are supposed not to have been owners already, can give them any right of ownership? Since the right of ownership gives to the proprietor, in addition to the right of use, only the faculty of excluding others permanently from the use of certain things, even when he himself is not using them; it is clear that an agreement could be made among men to distribute among themselves the usable things, so that each one should give up permanently his own right to use the things assigned to the others, and therefore would become owner of the things assigned to him, inasmuch as he would acquire the right of excluding others permanently from the use of such things. This arrangement *could be made obligatory by civil society*, if convenient for common good, and could also become the source of the posterior ownership, by establishing, for instance, that thereafter, things *nullius* should belong to the first occupant. It is not necessary for the foregoing to

assume an express agreement of all the parties, as when there is a question of evident convenience it is customary to act by tacit consent — as custom makes law. But, as we have remarked, civil society represents and interprets the tacit or expressed agreement of individuals as tending to the common good. The right of ownership which originated in such a distribution of things and the occupation so established are properly based on titles of positive human right, or established by civil society. This conception of the origin of ownership, which does not assume that society would not be bound by natural law to establish private ownership, but simply that society did establish it by fixing its titles, seems to have been the most general opinion among doctors of the Church and theologians until the 16th century.

This explains certain apparent contradictions, according to which they say at times that private ownership is a natural right, and at others that it has been established by human positive law. So while all of them acknowledge the necessity for the division of property, for the peaceful and orderly life of mankind, nevertheless, Saint Augustin asks: *From where does anyone possess what he possesses? Is it not from the human law?*" *(1)* Saint Thomas says: "*That man may have something as his own, is also necessary to human life*", and a little later, he adds: "*According to the natural law, there is not any division of possessions, but this exists rather from a human arrangement, that belongs to the positive law*". *(2)* Scotus contends that. "*to possess all*

(1) "Unde quisque possidet quod possidet? Nonne jure humano?" In Johannis Evangel. Cpt. I, Tract. VI, 25.

(2) "Quod homo propria possideat...est etiam necessarium ad humanam vitam." "Secundum jus naturale non est distinctio possessionum, sed magis secundum humanum condictum, quod pertinet ad jus positivum." (Summa Th., 2. 2dae. Q. 66, A.II.)

things in common would be contrary to peaceful human relations and even be an obstacle to the necessary sustenance of mankind", and also says that "*although the appropriation and division of common things has been allowed, the actual division was not made either by the natural or by the divine law*". *(1)* Molina affirms that "*The division of things is neither from the natural, nor from divine positive law, but was licitly established by the human right of peoples (jus gentium)*"; nevertheless he also recognizes that "*it was expedient and absolutely necessary to divide the ownership of things*". *(2)* Likewise Suarez (3) and Lessius (4) acknowledge the necessity and propriety of the division of things, but they deny it being required by natural law.

IS OCCUPATION A TITLE OF OWNERSHIP BY NATURAL RIGHT?

Subsequently, the majority of ecclesiastical writers, following Lugo, maintain that occupation of a thing *nullius* gives right of ownership by natural law alone. We shall examine this opinion carefully, as it is of fundamental importance, in an investigation of what is and what is not of natural justice in the institution of private property.

Lugo's argument is as follows:

"*It seems very hard to assert that the division of*

(1) "...communitas omnium rerum esset contra pacificam conversationem, item esset contra necessariam sustentationem" "concessa licentia appropriandi et distinguendi communia non fiebat actualis distinctio per legem naturae nec per divinam". (In IV Senten., D. 15, ns. 5 and 6.)

(2) "Divisio rerum nec est de jure naturali, nec de jure divino positivo, licite tamen de jure humano gentium introducta fuit"..." expediens et necessarium omnino fuit dividi rerum dominia, ut re ipsa intuemur". (De Justitia, Trt. II, D. 20, 5 and 6.)

(3) Opera Omnia. Paris 1856. Vol. V, Pg. 140: and Vol. III, Pg. 418.

(4) De Justitia et Jure, L. 2, C. 5, Dub. 3.

things could not take place without a decree of the community, or of the prince who had the power over the community. (This was the opinion of Scotus) *Supposing that there was not any decree, nor even any order given by Adam, I ask you: if any one would by his industry, art or labor paint a beautiful picture, or carve a beautiful statue, I ask you, would not that picture or image so belong to its maker, by the very law of nature, that he could not be deprived of it unwillingly, without robbery? Who can deny this? Was perhaps, a special decree of Adam necessary that the cattle which Abel used to pasture should be his own, or that the crops which Cain gathered by his work should be his own? If not, therefore, the very law of nature could divide and actually did divide the properties, before any human positive law existed. Hence, without any such decree, provinces and fields could belong to the first occupant, like pearls and similar things would belong to the finder, until a positive law would dispose otherwise; for this reason, it is said that, by law of nature, those things belong to the first occupant which previously belonged to no one*". *(1)*

It seems to us that the first conclusion arrived

(1) "Divisionem non potuisse fieri absque decreto aliquo vel communitatis vel principis habentis potestatem supra communitatem, durissimum videtur. Seclude enim omne decretum, et leges ipsius etiam Adami: peto si aliquis propria industria, labore et arte, depinxisset pulchram imaginem, aut bellam statuam sculpsisset, nonne jure ipso naturae, imago vel statua ita fuisset in dominio artificis, ut nonnisi furto, posset ab eo invito auferri? Quis hoc neget? An necessarium fuit peculiare Adae decretum ut greges pecorum quae Abel pascebat, sui essent, vel ut segetes quas Cain sua cultura colligebat, essent sua? *Ergo ipsum naturae jus ante omnem legem positivam humanam dividere poterat dominia et de facto dividebat.* Unde sine ullo tali decreto, *provinciae* et agri esse potuissent primo occupantis, sicut et gemmae, aliaque similia essent inventoris, donec ab illo per aliquam positivam legem auferrentur, atque ideo...dicitur naturae jure fieri primo occupantis haec quae in nullius boni sunt." (De Justitia et Jure, Disp. VI, Sec. I.)

at by the Cardinal, and which we have underlined in the foregoing citation, is perfectly logical and indisputable. But I think that in the other conclusions, he deduces more than the antecedents warrant. In fact, it does not seem to me that because Cain had a right to the ownership of what he made by his labor, he also should have the same right over a province he saw for the first time from a mountain top, or even over a small field on which he had expended no labor, although he might have visited and claimed it for his own. What evident argument (aside from the brute force he used against Abel) could Cain have used against others who, attracted by special advantages in this field, should begin to till it when he had not done anything in it? It may be remarked that, in all the examples advanced by Lugo, labor is a factor giving the ownership that power and special prestige that all recognize in the right of the person over his own labor; so that his conclusions in favor of occupation, as a title to ownership, would only have weight if he refers to occupation made through labor. But this does not seem to be the meaning of Lugo, as it is shown in his reference to a province as belonging to the first occupant. For the rest, it is not strange that Lugo failed to take cognizance of this distinction between occupation by labor or without it, inasmuch as the dispute concerning it had not yet arisen.

Lehmkuhl (1) adduces the same argument, with the same examples as Lugo and adds:

"*But, could the very matter from which somebody intended to carve a statue, or could the captured animals from which one intended to form a herd, be taken from him without injury? Since this must be certainly denied, it is clear that the mere occupation of a res nullius was sufficient to produce a real ownership, for you have nothing besides occupation to lean upon.*"

(1) "Nam ipsa materia, ex qua (aliquis) voluit statuam fingere, vel animalia capta, ex quibus greges sibi parare cogitavit, poterant sine injuria ipsi auferri? Quod si certissime negari debet, solam occupationem rei, quae eousque nullius fuisse sumitur, sufficere necesse erat, ut ipsi verum dominium jam ortum esset. Nihil enim praeter occupationem habes, quo nitaris." (*Theologia Moralis*, Vol. I, Pg. 550).

Those who deny the force of mere occupation in natural right easily answer the plea of the author, by saying that in addition to mere occupation there is in those cases, the labor of capturing the animals and that of taking out of the quarry the stone, or the marble, to be used for the future statue, and that, up to the time of this labor, such things were common, or were at the disposal of the first one who might want to use them. Lehmkuhl might insist, by using the words of Dr. Ryan (1) who, in referring to a very similar example, says:

"*In the present case, indeed, the acts of apprehension and of productive labor...are the same physically, but they are distinct logically and ethically. One is mere occupation, while the other is production: and ownership of a thing must precede, in morals if not in time, the expenditure upon it of productive labor.*"

In truth, men having, as we have seen that they have, the right to use things given in common by nature, the necessity is not patent as to their being first the exclusive owners of them, in order to be able to use them. Ecclesiastical writers agree that in the state of innocence there would have been no private ownership, but nobody says that for this reason the things were not to be used. The ethical and logical priority of occupation over labor, of which Dr. Ryan speaks, is asserted with other words by Vermeersch (2), who says that in a case like the one in question, occupation and not

(1) "Distributive Justice" p. 28. New York 1919.
(2) "Quaestiones de Justitia" pp. 284 and 285. Brugis 1901.

labor is the *formal element* of title of ownership. But if in this title we seek the moral element which makes it respected by other men, laying aside positive law or any agreement for the common good, we find nothing but this instinctive idea that man has a right to what he produces by his labor. It seems that if in these cases, the right of one person to use a thing and exclude others therefrom while he is using it, was converted into the right to exclude them permanently, it is because he has put into that thing something exclusively his own, which is remaining there: his *labor* and its effects. This seems to be that something by which the person occupies the thing and is therefore, the formal element of occupation, and is ethically and logically anterior to it.

Defenders of the necessity of occupation prior to labor may insist by saying with Dr. Ryan (1): "*The right to use ownerless goods is a general and abstract right that requires to become specific and concrete through some title.*" In this assertion, the right to the use of the goods is put in the same condition as the right to acquire ownership thereof; but there is an essential difference: the right to the use of a thing is the same as the right of using it, and a person would have no right of using a thing who would need a title to use it. On the other hand, the right to acquire ownership is not the same as the right of ownership; and the second cannot be deduced from the first without the exhibition of a title. Right to the use is ordained merely to the production of an act: the use. But the right to acquire ownership is ordained directly to the production of a special kind of act, the title, and indirectly to the production of another right, the ownership, which, as is evident, cannot be obtained without the intervention of a title. For acts,

(1) "Distributive Justice," p. 27.

and not other rights, seem to be the direct object of a right, which in its turn, is the object of a title.

Garriguet (1), Dr. Ryan and other authors add the argument that occupation is the only title that explains ownership over the materials of things and over the soil on real property: "*...since labor can give a right only to the utility added to natural materials, not to the materials themselves.*" (2)

To this, opponents may reply that ownership of such things is not necessary, and therefore is not of natural right; as man having the right to exclude others from the common things he is using; whilst he has the soil, or the materials, under occupation, with the utility put into them by his work, no one will ever be entitled to deprive him of this use he makes of them as receptacles of his labor. And this is enough for obtaining all the advantages of the private property over the materials and the soil. But supposing that such private ownership over the very soil and materials are necessary and of natural right, it is not deduced, as we just now saw, that nature could not leave to civil society, which is likewise of natural right, the creation and establishment of titles necessary for that ownership.

Antoine (3) says: "*L'homme, avons nous dit, a le droit d'acquérir les biens extérieurs et, pour être efficace, ce droit doit être concret et determiné: Or l'occupation n'est que la mise en pratique du droit d'acquérir la propriété. Appliqué à des objets qui jusqu'ici n'ont pas de maître, l'occupation ne blesse le droit de personne; elle est donc parfaitement légitime.*" This presupposes what the author is trying to prove, as from the natural right of man to acquire external things the right of occupation is not

(1) "La Propiedad Privada" p. 60. Madrid.
(2) Dr. Ryan. "Distributive Justice" p. 29.
(3) "Economie Sociale" p. 483. Paris 1899.

inferred, unless it has been expressely proven that man has a natural right to acquire them by occupation, what the author has not done. Therefore, until the juridical force of occupation is proved, it cannot be said that it does not violate the right of those who may come afterwards to use the thing, or who may need it before the occupant does.

Vermeersch (1) offers a new argument, rather involved in complicated scholastic forms; but which, it seems to us, might be translated into plain language and summed up thus: " Right of ownership, according to the general opinion, connotes the following elements: purpose of dominion, outward sign, subjection of the thing,or the exclusive enjoyment of its utility. The act in which all these elements are combined will be the original act of the right of ownership. Now, then, all these elements are only found in occupation with the conditions explained by me. Hence this is the originating fact of ownership."

It seems to me that this only proves that occupation, as the author understands it, is the first exercise of the right of ownership, the first act whereby this right manifests itself, or, as the author says in his thesis, it is the act whereby, "*a thing is shown, according to its nature, as subjected to the ownership of somebody, and as employed by him in a use that cannot be common.*" (2) But, when there is a question of looking for the title, or the fact originating the right, it is not a question of looking for the fact in which are manifested the jurisdiction of the person and the subjection of the thing, but for the fact which creates this jurisdiction and originates this subjection. As the author says (p. 277) the title is "*the immediate cause on which the right to posses something is directly based.*" (1) The first title is not then, the act in which all the elements necessary for the right of ownership appear combined, but the act which brings about this combination.

(1) " Quaestiones de Justitia" pp. 282 and 283. Brugis 1901.

(2) " Res, pro natura sua, demonstratur alicuius subjecta potestati vel ipsi serviens ad usum qui nequit esse communis." (p. 280).

Liberatore shows the juridical power of occupation as follows: " *For he who first occupies a thing which is a res nullius makes this thing in a certain way his own, by his action, and thus puts himself in such a condition that, in regard to this thing, he ought to be preferred to all others who have not done likewise. If accordingly, he manifestly declares that he wishes to retain this thing for himself, in order to make it, by ulterior work, fit for his purposes; then others cannot interfere with him, unless, either, they may deny the man's right, given by nature, to provide in advance for his needs, or think that there is no difference between a person who by an action, that is through the effusion of his personality, has operated over a thing nullius, and those to whom such a bond to the thing is still lacking.*" (2)

If the occupation referred to by Liberatore consists in the effusion of personality through the words, as in the statement in question, without any act of the occupant having added any utility to the thing, at least relatively, if he did not find or

(1) " Causa proxima qua immediate innititur jus possidendi aliquam rem."

(2) " Nam qui rem in medio positam, seu quae nullius sit, primus occupat, eam actione sua sibi quodammodo devincit seque in statu constituit ut quoad illam aliis omnibus praeferri debeat, qui idem non praestiterunt. Si igitur externe declaret se rem illam sibi retinere velle, ut ulteriore labore ad suos usos proficuam reddat: ceteri ipsum prohibere non possunt, nisi aut jus denegent, a natura homini concessum, prospiciendi stabiliter propriae vitae: aut nullum discrimen haberi opinentur inter eum, qui circam rem nullius actione aliqua seu effusione propriae personalitatis operatus est, atque eum qui hoc vinculo adhuc caret." (Institutiones Philosophicae.) Vol III, p. 197.)

discover it, or did not take it apart from where it was, or keep it among his own possessions; it does not appear that his pretended right is to be respected by those who need the thing before him, or who merely want to use it before he does so. So, one cannot see clearly why this primacy of words should outweigh the primacy of necessities, or of acts, which others may allege. It seems that, to destroy the right of usage others have over things *nullius*, words are not enough, however effusive they may be.

Garriguet (1) advances in favor of occupation the fact of universal custom, but he gives no argument to prove that this universal practice is not due to the positive law or *jus gentium*, as the theologians to whom we recently referred, think. For the rest, in his conclusion of this argument he only says: "*It is impossible that such a general practice sanctioned by laws, may be unjust and criminal.*"

This conclusion is contrary to Henry George, but not to those who maintain that occupation derives its juridical force from positive law, as we do.

Opposed to this opinion, I find that another argument may be brought. The decree of the prince (2) and the primitive pact (3), which according to this opinion, would have made the first distribution, or established occupation as original title to private ownership, assume that the tribe among whose members this pact was made, or the prince who issued the decree, were first in possession of the land to be distributed; and this possession is necessarily confined to prior occupation. Hence it is that, if the moral force of occupation in natural

(1) La Propiedad Privada p. 61. Madrid. (Translation from the French.)
(2) Cathrein, " Philosophia Moralis " p. 297. Friburgi 1907.
(3) Vermeersch. " Quaestiones de Justitia " p. 285.

right is denied, neither can it be accepted in positive right. It does not seem to me that this last argument either is conclusive; for, in the first place, if occupation by natural right is a necessary title to originate public ownership, and hence sufficient to it; it does not follow that occupation is also sufficient to originate the private ownership, for the origin of which occupation is not the only possible way. Consequently, in denying the natural force of occupation as title for private ownership, it is not to be also inferred that the natural force of this title as the origin of public ownership is likewise denied. But I think that neither can it be proved that occupation is necessary as primitive title of public ownership, independently of the *jus gentium* or of that tacit or expressed agreement of peoples over certain things that are advisable in order to live in peace. Neither is it necessary to infer the previous existence of public ownership as a recognized right, in order to explain, as we have done, the origin of private ownership, within a town, by the renunciation on the part of individuals of the right to use things others may occupy, affirming thus among themselves occupation as title of ownership, which, as it appears, is an appropriate method for maintaining peace in a primitive society. Let it be noted further that prior to all right of ownership the men and the peoples had the natural right, to the use of the things to the exclusion of others, while they were in use, if the use could not be made in common. Now, this indicates that people have a right to use a country by inhabiting it, and to exclude other peoples who may attempt to interrupt them in the exercise of this right, which is not a right of ownership, but a right of use. This is manifested from the fact that, if this people emigrates elsewhere nobody will say that by natural right they have

the right to continue excluding others from living in the same country.

Among other authors I have consulted upon this question, I have found no argument distinct from those we have just examined in defence of mere occupation as title of ownership by natural right. So that we may deduce with certainty that mere occupation without labor (or any human activity improving the thing) is not a sufficient title of ownership by natural right, although it may be, and with much reason, by human positive right. (1) It seems to us then that Henry George is correct in his criticism of this title as of natural right; but what was a grave mistake on his part is the non-recognition of the force of this title as an institution of positive law. No one can deny that this institution has been of immense utility for peace and progress among men, and that its expediency is indisputable, at least in societies that have not attained a high degree of organization.

(1) Rev. G. Amor Mozo (" Si Hay Una Doctrina Católica Acerca De La Propiedad ". Madrid 1920), remarks rightly that Leo XIII, in his accurate demonstration of the licitness, expediency and necessity of the institution of private property, only refers to labor as title of ownership, and he never mentions occupancy. Leo XIII (Rerum Novarum) says that " God did not give to anyone a particular portion of land to possess, but left to man's *industry* and to the *laws of peoples* the determination of private possessions. "

CHAPTER II

RIGHT OF PRODUCTIVITY

OPINION OF MEDIEVAL THEOLOGIANS

Shall we infer from the foregoing discussion that nature has not given to man the means of acquiring private ownership independently of civil society? That the first has no existence except through the action of the second? Shall we deduce that there is no title of ownership established by nature itself, the validity of which may be anterior and stronger than any legal arrangement, as based in the essential requirements of human personality?

This deduction would be extravagant; for if occupation *per se* does not create a right of ownership, in mere natural law, it does not follow that labor cannot create it, or occupation effected through labor. But before entering upon an examination of this title of ownership, we wish to say that it would be also unjust to think that St. Augustine, St. Thomas and the Medieval doctors in general, who we have quoted as maintaining that private property have been instituted by the said *jus gentium* or by the human law, have denied the moral force of the producer's right to the private ownership of his product, or that they have considered such a right as a mere civil institution. The following quotations show the contrary. Polier says for the Medieval doctors (1):

(1) " Le Salaire juste " p. 63. Paris 1903.

"*Rien n'est obtenu légitimement que par le travail. Il est la source de toute propriété, et les docteurs ecclésiastiques ne cessent de prêcher que seul le travail intellectuel ou manuel est autorisé à participer aux biens de la terre.*"

Janssen (1) says regarding the same epoch:

"*Tous les écrivains canonistes s'accordent avec luí (*Langenstein*) pour regarder le travail comme la source du gain et comme y donnant seul droit. Lui seul, non la propriété, confère un titre valable de possession et voilà pourquoi le travailleur ne doit jamais être frustré du fruit de son labeur.*"

Brants (2) repeats the same ideas as to the doctors of Middle Ages and Gierke (3) makes the following reference to John of Paris. a writer of that time:

"*See also Joh. Paris, c. 7, where private ownership is placed outside the sphere of the public power, temporal and spiritual, by the more specific argument that such ownership originates in the labor of an individual and this is a right that arises wilhout the connexion between men or to the existence of a society wilh a common head.*"

If the theologians in question, as we have seen, say that the distribution of property was made through human positive right, they say this in regard to reality, especially as to fields, not to the fruits of labor. They refer to those things which nature has given to all in common, not to those others which are the product of the strength of each one, and of which Vermeersch (4) says: " That have been given by nature as one's property." That this was the idea of those writers is clear

(1) " L'Allemagne et la Reforme " Vol. I, p. 393. Paris 1887.

(2) " Théories Economiques du XIII et du XIV Siècles " Ch. VI, 1. Louvain 1895.

(3) " Political Theories of the Middle Age " p. 180. Cambridge 1900.

(4)" Quae a natura sunt datae propriae ": Quaestiones de Justitia p. 11.

by examination of the following passages from Suárez: (1)

"*The expediencies which show that the division of things is more convenient in the fallen nature, do not prove that such a division obliges under natural precept, but only that it conforms to this human state and condition.*"

This shows that the division of things, according to his opinion, was by action of human positive law, and that therefore mere occupation would have been valueless in simple natural right. However, he acknowledges the necessity of dominion over the products of one's own labor, not only in the natural right of fallen nature, but even in the state of innocence in which, as it is known, theologians have always held that there should have been community of goods; and be it noted that in this passage believes that he interprets the sense of the other theologians: (2)

"*... inasmuch as movable things are more apt to be divided, because by the very fact of being occupied, or of being taken, they belong to the occupant. And it seems that this right was also necessary in the*

(1) " Congruentiae quae ostendunt divisionem rerum esse commodiorem in natura lapsa, non probant hanc divisionem esse sub praecepto naturali, sed solum esse huic statui et conditioni hominum accommodatam." Opera Omnia, Vol. V. c. 180.

(2) "...nam movilia magis sunt subjecta divisioni, quia eo ipso quod occupantur, *seu capiuntur*, fiunt accipientis. Et hoc jus videtur fuisse necessarium etiam in statu innocentiae. Nam qui colligeret fructus arboris ad comedendum, eo ipso adquireret peculiare jus in illos, ut posset illis libere uti, et non possent invito possidenti auferri sine injustitia. At vero in bonis immovilibus non esset necessaria talis divisio; *et de illis principaliter loquuntur dicti auctores.* Considerandum vero ulterius est, potuisse homines in illo statu operari terram et fortasse aliquam ejus partem seminare. Inde ergo necessarium fieret consequens, ut postquam aliquis *particulam terrae coleret*, non posset juste ab alio privari usu *et quasi possessione illius:* quia *ipsa naturalis ratio* et ordo conveniens hoc postulat... Haec tamen quasi nihil reputantur: et ideo absolute negatur divisio bonorum in illo statu."

state of innocence. Since he who would gather the fruits of a tree to eat them, by this very fact, would acquire a peculiar right over them, so as to use them freely, and others could not take them, against his will, without committing an injustice. But such division would have not been necessary in regard to immovable goods; and about these latter the authors referred to, principally speak. Nevertheless it is to be considered that men could in that state cultivate the land and perhaps sow a part of it. But from this a necessary consequence would follow: that after somebody would cultivate any little portion of land, he could not be justly deprived by others of its use and quasi possession; because natural reason itself and the convenient order require so. Nevertheless, this is considered as nothing, and so, the division of goods is simply denied in the state of innocence.'

We have further seen in the beginning of this work that the only concrete private ownership granted by nature to each human being is dominion of the latter over his own being, his soul, his body and his faculties. We likewise saw that he had the right to the exercise of his faculties in the natural use of external things. Does or does not that exclusive and personal dominion over one's own faculties include like dominion over the product of the exercise of such faculties on the things of the external world? Is or is not he who is the full owner of the cause, thereby full owner of its effects? At first sight the logical consequence uniting these two dominions, presenting them as one alone, seems indisputable, so that as a rule the only ones denying the second of these dominions are those who also deny the first. The materialists, who logically deny the essential dignity of the human person, like the pantheists and the Hegelians, who deny all right and dominion not derived from the State, naturally disown ownership of the

individual in the product of his faculties; because they even deny all moral or legal dominion of the individual over his very faculties. However, this does not keep many of them from recognizing and defending the right of the individual over his labor and the product thereof; doing so, they were doubtless impelled by one of those mental instincts to which we have referred, and which, not because of lacking of foundation upon their philosophical theories, yet had less power over their consciences.

Modern authors who accept the Christian conception of human personality, which we explained in the words of Fr. Kelleher, and therefore, acknowledge the complete dominion of the individual over his faculties, are logically compelled to accept the intrinsic relation between this dominion and that of the product of the labor thereof. We are not unmindful that there are many Catholic authors, perhaps all, who deny the right of the workman to the full product of his labor, as understood by the Socialists. But this is simply because they deny that this so called *full product* is in reality wholly produced by labor, not because they put in question the natural right of workman over the effective product of their own efforts. Here are some citations that bring this out.

OPINIONS OF MODERN THEOLOGIANS. ON RIGHT OF PRODUCTIVITY

Cardinal de Lugo, considered by many as the greatest of theologians after Saint Thomas, says: (1)

"*For the artist who makes an image, has such a connection with it, that he cannot but be its owner, unless, by will of the artist or of his superior, the*

(1) Nam artifex qui facit imaginem, habet talem connexionem cum re illa, ut non posset non esse illius dominus, nisi per contrariam connexionem, quam imago, ex artificis vel alterius superioris voluntate, habeat cum alio. " De Justitia et Jure. Disp. 23. n. 59.

image may have a contrary connection with another person."

The opinion of moralists is unanimous in recognizing the right of the author over the product of his genius, as a natural right, and likewise that of the artificer over the value of his labor, even when performed with the materials of another, but in good faith. These are cases in which, as is evident, no title other than labor can be claimed. I will cite only a few:

Saint Alphonsus: (1)

"*When a form is given to a matter that belongs to others, f. i. if in good faith, you make a dress from wool that belongs to another, you would become owner of the dress by paying the price of the wool.*"

Lehmkuhl: (2)

"*By mere natural right... the author has a right to the fruits of his talent; at least therefore, until he has not published the things he has conceived and written, he has a strict right not to have them invaded and divulged.*"

Ballerini-Palmieri (3) adopt a Gury's principle by saying:

"*Gury established (Tom. I, n. 566.) this principle: every man has by natural law a right over the fruits of his industry and talent; since omnis res fructificat domino.*" *(A thing fructifies for its owner.)*

No less uniform is the opinion of ecclessiastical

(1) " Quando forma datur in aliena materia, v. g. si bona fide ex lana aliena vestem tibi conficias, dominus illius efficeris. domino lanae pretium solvendo." (Theologia Moralis Vol. III, p. 224. Mechliniae 1852.)

(2) " Spectato solo jure naturali... Auctor jus habet in toetus ingenii sui: quapropter saltem quamdiu ea quae mente et scripto concepit, publici juris non fecerit, i. e. in lucem non ediderit, jus strictum habet, ne quis illa invadat atque divulget." (Theologia Moralis Vol. I, p. 548. Friburgi 1886.)

(3) " Praestituit *Gury* tom I, n. 566, principium: hominem quemlibet ex jure naturali jus habere in fructus suae industriae et sui ingenii; omnis enim res fructificat domino." (Opus Theologicum Morale p. 52. Prati 1890.)

writers of philosophical treatises that deal with Natural Law:

Taparelli: (1)

"*Are not the fruits of personal fatigue the property of him who fatigues himself? Inasmuch as human nature only being considered, I cannot be obliged to serve another (because among equals there is no reason to determine who should be the servitor and who the one served); it is clear that what I make is of my right, since it is a part of myself, as my effect, the effect being a part of its cause, as contained by it and dependent upon it.*"

Liberatore: (2)

"*Furthermore, man is naturally industrious, and accordingly, tends to transform external things by his art and to fertilize by his sweat the bounty of nature... But surely, it is iniquitous that one may enjoy what another has transformed by his labor, or has improved and made fruitful, what another, by careful application of his activity, has stamped with the seal of his personality.*"

Manier: (3)

"*The right of property derives necessarily from*

(1) " I frutti delle fatiche personali sono eglino propieta di chi fatica? Se in vista della sola humanita io non posso essere astretto al servizio altrui (poiche fra uguali non vi sarebbe una ragione di determinare il servitore e il servito); egli e chiaro che cio che io opero, e di mio diritto essendo parte di me, perche mio effetto, e l'effetto e parte della sua cagione giache contenuto nella cagione e da lei dipendente.' (Saggio T. di Diritto Naturale Vol. I, p. 253. Roma 1855.)

(2) " Praeterea homo industrius est vi naturae, atque ideo ad res naturales arte sua transmutandas et ad ubertatem terrae sudore suo fecundandam ordinatur... At vero iniquum est, ut quis re fruatur quam alter labore suo transmutavit aut meliorem aut feracem reddit, quamque sedulo activitatis excercitio, quasi sigillo propriae personalitatis obsignavit.' (Institutiones Philosophiae Vol. III, p. 197. Neapoli 1871.)

(3) " Jus proprietatis necessario defluit ab exercitio nostrae activitatis. Nam ubi homo activitate sua et industria meliorem efficit aliquam materiae portionem, quae a nullo alio antea erat occupata, v. g. lignum, lapidem agrum, etc. tunc homo ille huic materiae portioni aliquid confert quod suum est, et quo spoliari nequit, quin ipsi suum, et proinde quin jus illius laedatur." (Compendium Philosophiae Vol. III, p. 250. Paris 1864.)

the exercise of our activity. Inasmuch as, when man through his activity and industry improves a portion of matter that nobody has already occupied, f. i. a piece of wood, a stone or a field, then that man confers to such portion of matter something that is his own, and of which he cannot be deprived, without being deprived of his own, and therefore without violation of his right."

Cardinal Zgliara: (1)

"*For not only the proper substance, but also the extension of its activity, belong to human personality... the industry which applies to permanent things, improves and makes them fruitful. Therefore, from the natural right to possess oneself, a right necessarily results to acquire permanent properties, which if another invades he injures the right of human personality.*"

De Giorgio: (2) repeats the same opinion, and Cardinal González adds: (3)

"*Doubtlessly the man's deed and industry over an external thing that he transforms by his labor, is like a secondary creation of the thing; hence likewise, the Supreme Creator, God, obtains from the fact of creation, dominion over all things: so, in virtue of this secondary creation referred to, man*

(1) " Etenim ad hominis personalitatem non solum pertinet propria substantia, sed etiam explicatio suae activitatis... industria quae applicatur rei stabili eam perficit redditque fructuosam. Ergo, ex jure naturali sese possidendi, necessario emergit jus adquirendi stabiles proprietates, quas cum invadit alius laedet manifeste jura humanae personalitatis." (Summa Philosophica Vol. III. p. 168. Paris 1889.)

(2) Institutiones Philosophicae pp. 589 and 590. Utini 1865.

(3) " Indubium est hominis opus et industriam erga rem corpoream quam labore transformat esse veluti quamdam secundariam rei creationem; sicut ergo supremus rerum Creator Deus. dominium in res obtinet ex ipsa creatione, ita homo ex ratione praefatae secundae creationis, obtinet jus dominii seu proprietatis in rem illam, quamvis subordinatum et subjectum juri Creatoris supremi et primi." (Philosophia Elementaria Vol. III. p. 161. Madrid 1885.)

obtains a right of dominion and properly over that thing, though with subordination and subjection to the right of the first and supreme Creator."

We find the same opinion in the latest ecclesiastical writers on social questions.

Antoine (1) says that the right to life "*gives to each one the right to work and to enjoy the fruits of his work*".

Cathrein: (2)

"*Every man is owner of his faculties and consequently of the fruits of his works. Hence in the beginning of mankind any one could adapt to his use any thing 'nullius', making, f. i. a plough or a bow from a piece of wood. These fruits of labor and consequently also the matter in which this labor had been expended would belong immediately and exclusively to the laborer.*"

Vermeersch: (3)

"*There is inherent to men a not less strong tendency to consider as his own the fruit of his labor. And this universal persuasion has indeed a truthful foundation, when asserting that the product should belong to the one to whom the labor belonged. But nature*

(1) Économie sociale p. 493. (Paris 1899.)

(2) " Quilibet homo est dominus suarum facultatum proindeque fructuum laborum suorum. Poterat ergo initio generis humani unusquisque res nullius in usum convertere v. g. faciendo sibi aratrum vel arcum ex ligno. Hic fructus laboris ideoque etiam materia in quam labor impensus erat, profecto exclusive ad operantem pertinebat." (Philosophia Moralis p. 295. Friburgi 1907.)

(3) " Non minus vehemens inest homini inclinatio ad vindicandum pro suo fructum sui laboris. Imo veritate nititur haec persuasio, qua omnes existimant, illius esse opus cujus fuerunt operae. Natura autem ita res disposuit, ut nullae operae essent fructuosae, nisi quae alicui rei exteriori applicarentur quacum unum deinceps individuum fierent corpus... Haec ergo altera via fortasse breviore, adducitur homo, quasi manu naturae, in opinionem proprietatis privatae." (Quaestiones de Justitia p. 251.)

so ordered things that labor cannot be fruitful, unless it is applied to external things, with which the labor constitutes thereafter one indivisible body... So, by this perhaps shorter way, man is led as by the hand of nature to his persuasion about private property."

We will in conclusion quote the opinion of Pope Leo XIII, in his famous encyclical "Rerum Novarum": (1)

"*Now when man thus turns the activity of his mind and the strength of his body towards procuring the fruits of nature, by such act he makes his own that portion of nature's field which he cultivates—that portion on which he leaves, as it were, the impress of his individuality; and it cannot but be just that he should possess that portion as his very own, and have a right to hold it without any one being justified in violating that right... For the soil which is tilled and cultivated with toil and skill utterly changes its conditions: it was wild before, now it is fruitful; was barren, but now brings forth in abundance. That which has thus altered and improved the soil becomes so truly part of itself as to be in great measure undistinguishable and inseparable from it. Is it just that the fruit of a man's own sweat and labor should be possessed and enjoyed by any one else? As effects*

(1) "Jamvero cum in parandis naturae bonis industriam mentis viresque corporis homo insumat, hoc applicat ad sese eam naturae corporeae partem, quam ipse percoluit, in qua velut formam quamdam personae suae impressam reliquit; ut omnino rectum esse oporteat, eam partem ab eo possideri uti suam, nec ullo modo jus ipsius violare cuiquam licere... Ager quippe cultoris manu atque arte subactus habitum longe mutat: ex silvestri frugifer, ex infecundo ferax efficitur. Quibus autem rebus est melior factus, illae sic solo inhaerent miscenturque poenitus, ut maxima parte nullo pacto sint separabiles a solo. Atqui quemquam potiri illoque perfrui, in quo alius desudavit, utrumne justitia patiatur? Quomodo effectae res causam sequuntur, a qua effectae sunt, sic operae fructum ad eos ipsos qui operam dederint rectum est pertinere."

follow their cause, so it is just and right that the result of labor should belong to those who have bestowed their labor."

So, all these authors think that the right of the worker over the product of his work derives from the fact of the work being a personal production of the worker, they think that this right derives necessarily and immediately from such a fact, previously to any consideration about the common good or about possible methods of distribution. Dr. Ryan (1) does not think so; he maintains that a man has a right to the things that he may produce, not because of any intrinsic relation between producer and product, but because the recognition of the producer's right is required as the best system to distribute the things of the earth. His opinion is clearly set forth in the following passages.

"*No principle, title or practice of ownership, nor any canon of taxation has intrinsic or metaphysical value.*" (2)

"*Productivity does not of itself create a right to the product. It is not an intrinsic title. That is to say, the right to the product is not inherent in the relation between product and producer... Why has Jones a right to the shoes that he has made out of materials that he has bought? Not because he needs them: he is not alone in this condition. The ultimate reason and basis of his ownership is to be sought in the practical requirements of an equitable social distribution.*" (3)

"*All titles of property, productivity included, are conventional institutions which reason and expediency have shown to be conducive to human welfare. None of them possesses intrinsic or metaphysical validity.*" (4)

"*When a man makes a useful thing out of the*

(1) "Distributive Justice" New-York, 1919.
(2) Id. p. 109.
(3) Id. p. 149.
(4) Id. p. 150.

materials that are his, he has a strict right to the product simply because there is no other reasonable method of distributing the goods and opportunities of the earth. If another individual or society were permitted to take this product, industry would be discouraged, idleness fostered, and reasonable life and self-development rendered impossible." (1)

"Where, however, the greater productivity is due merely to higher native qualities, physical or mental, the greater reward is not easily justified on purely, ethical grounds... In very many cases, however, the possessors of superior productive power believe that they should be rewarded in proportion to their products, regardless of any other principle or factor. Probably the true explanation of this belief is to be found in man's innate laziness. While the prevalence of the conviction that superior productivity constitutes a just title to superior compensation, does create some kind of a presumption in favour of its correctness, it must be remembered that presumption is not proof...the ethical validity of the canon of comparative productivity can neither be certainly proved nor certainly disproved." (2)

" *Moreover, the canon of human welfare* (which Dr. Ryan defends as the supreme rule of distributive justice) *demands that superior productivity receive superior rewards, so long as these are necessary to evoke the maximum net product.*" (3)

ARGUMENTS IN FAVOUR OF THE RIGHT OF PRODUCTIVITY

It seems to us that the natural right of the man to the product of his labor cannot be put in doubt without violating the sacredness of human personality, which is the foundation of all rights

(1) Id. p. 179.
(2) Id. p. 248.
(3) Id. p. 385.

among men; and that such a right is, at least, logically anterior to any relation of the invidual to civil society, inasmuch as it is derived immediately from certain qualities essential to the human being.

1. *Man exists for himself.*

Dominion over his own being is an essential property of a person, for this is, as the scholastics say " ens sibi existens " (being that exists for himself ..(1) This dominion evidently includes dominion over his own faculties, and this in its turn includes dominion over the external effects of their exercise; for, without the latter, the first would not be true dominion. In fact, there are human faculties which are ordained essentially for producing external effects, and whose dominion would have almost no value, or object, without dominion over the effects. Can a man be said to have full dominion over the strength of his arms, or the right of using it for his own exclusive benefit, if he has no dominion over the effects of such strength on external things? Can a person be said to be a being who exists for himself, if a part of his being, the power of producing external effects, does not exclusively exist for him? (Of course, notwithstanding, or better, precisely because of, this exclusive destination of man's faculties to his own benefit, a man may have the duty of using his faculties to fulfil his obligations for his fellow men, yet tending through such a fulfilment to his own personal end.) Then, from the fact that man is a person, and consequently, the whole man exists for himself, we necessarily infer his exculsive and complete dominion over his faculties and their

(1) " Quaestiones de Justitia ". p. 6. Vermeersch, Brugis 1901.

natural object, as it is, the utility obtained through their exercise upon the outside world. (1)

2. *Identity of external effects and person's energy*

The same conclusion that the dominion of man over the energy of his faculties naturally embraces its exterior effects, can be deduced from the consideration that these effects are but a mere transformation of that energy. The movement of the hammer directed by the arm of the smith, the change he works in the iron that he strikes, and the new form it takes on, are but the same energy and movement of the arm which has passed into the iron through the hammer, pursuant to the physical laws of transmission and transformation of energy and movement. Then the owner of the muscular force and the movement of the arm is also the owner of the new form of the iron, as the owner of the water does not cease to remain so, because the water is transferred to glasses of different shape, or because it freezes when exposed to cold.

3. *Man, a tool of no one*

As servitude consists in being treated as an instrument, as Saint Thomas says: "cum servus sit quasi instrumentum domini in operando"; (3) so natural independence of the human being consists in being a tool of no one. Now to deny a man's dominion over the product of his labor is to convert him into an instrument of the person or persons to whom this dominion is ascribed.

(1) Leo XIII says in regard to human labor: "The acting force is adherent to the person and *belongs absolutely* to him by whom it is exerted and *for whose utility* it comes into existence." ("Vis agens adaeret personae atque ejus omnino est propria, a quo exercetur, et cujus est utilitati nata." Rerum Novarum.)

(1) "Summa Th." Suplmt. Q. 52, A. IV.

Then from the independence of the person is necessarily derived his exclusive dominion over the product of his labor. In fact, one who serves for the benefit of another is called an instrument, and the man whose product, in whole or in part, belongs to another man or to society, serves for the benefit thereof, and he is then, in whole or in part, its instrument. Naturally this does not mean that man cannot sell or exchange the product of his labor, thus making it serve for the benefit of another; inasmuch as in this case labor is ordained primarily for self-advantage, and only by best serving this, does it secondarily benefit another.

In not accepting the full force of this right, Dr. Ryan, who makes such a strong defence of the rights of the human being in his lifelong campaign for the man's right to a living wage, seems to convert the most productive persons into instruments of society, or mere tools for social welfare, or for the benefit of other individuals. What but an instrument of social benefit is that individual who, once his vital needs are safeguarded, should be paid for his work not according to his production, but only what would be sufficient to make him produce the maximum net results for society at the lowest cost for it? (1) Isn't this rule the same that is followed in regard to the expenses for the preservation of an instrument? It is the rule followed by every wise master in fixing the payment of his slaves, according to his own convenience. It is the rule followed by the owner in estimating what he must spend for the maintenance of his animals and his machines. But it cannot be the rule to fix the payment of the free man, "*who is an end in himself, and has a personality of his own to develop through the exercise of his own*

(1) "Distributive Justice" pp. 252, 385.

faculties". (1) It may be said that any portion of his product that is denied to the producer is enough to convert the latter into an instrument, at least in so much as he is producer of that part; so that, if the person is not to be an instrument, it is essential for him to have the right over all that he produces with his faculties.

4. *Man's responsibility for his acts*

Responsibility is another of the essential properties in the conception of person. His acts and the consequences of his acts are attributed to him, and he is made responsible for them, in their good as well as in their evil effects. This is the logical result of the recognition of free will in persons, which enables them to perform or not perform certain deeds as they choose; so that, their will may be considered the ultimate and therefore responsible cause of these acts and their effects. So he who does any damage to the property of another is made to repair the damage. He who destroys his neighbor's goods is made to restore them, and for the same reason, the one who constructs is regarded as the owner of the structure, and the one who produces something, as the owner of his product. Be it noted that this responsibility is only put upon man when he acts freely and consciously, and thus he is not always made to pay the damages he does unknowingly, nor always acknowledged as necessarily having dominion over what he may produce by chance.

However, seeking social expediency, legislation makes a man responsible on certain occasions for what he may do inadvertently, as when he is made to pay the damages from a fire caused by his throwing unknowingly a lighted match

(1) Dr. Ryan, "A Living Wage" p. 46. See also p. 358.

into a wheat field, or when ownership of a treasure is recognized in the one who has had the luck to find it. In these instances mere physical causality could not have produced the moral bond that constitutes the obligation, like the right, and hence the necessity for the intervention of a positive law, or of a conventional agreement, to create the right and the obligation to which we have referred. Evidently such intervention is unnecessary when the person and the object are united, not only by a physical, but by a moral causality, sufficient in itself to create moral responsibilities and obligations. We may then say that the obligation to repair the damages and the *dominion over the thing produced* are the essential consequence of the responsibility attributed to persons from their conscious and free actions.

5. *Res fructificat domino*

That he who is owner of the cause is also owner of the effects, or what is the same thing, "res fructificat domino" (a thing fructifies to its owner), are principles which authors have always held as self-evident and needing no demonstration, for they thought the explanation of the meaning of their terms sufficient to show their truth. But evil days have come for them as for all principles, as scarcely any to-day is not put in doubt. (1) Let us then seek a more evident principle, if possible, to demonstrate by its help, the value of the previous ones, and thus secure for these the acceptance at least of the few persons who may accept the other. *He who is owner of the whole is likewise owner of the parts.* But in this world the effect is part of the cause, as the fruit is part of the tree. Therefore he who is owner of the cause is also owner of the effect, or rather, "res fructificat domino". In

(1) "Distributive Justice" pp. 104 and 180.

order to see that the effect is part of the cause, it is enough to say that the question is of the effect produced in so far as it is such, not of the thing on which the effect is produced; and the question is as to the owner of the cause so far as such, not of the owner of a thing joined to or united in any wise with the cause, or of the owner of the cause at a moment when the latter is no longer cause. The effect as such is something that was in the cause and has been removed from the interior therewith; just as we see the fruit that springs from the tree, and which is afterwards plucked therefrom; so the milk from the mother, so the movement and the power that springs from the muscle and is transmitted to the hammer. These effects were part of the cause and belonged to its owner in the very instant of separation. Separation destroyed the physical union between the whole and the part, but it cannot destroy the moral connection that already existed between the owner of the whole and the part which becomes separated.

So the principle, " res fructificat domino " can cause doubts to arise only in its application, but not in itself. Dominion over the effect might be doubted when this proceeds from distinct causes having distinct owners. Thus in simple natural right, the ownership of a calf whose parents are of different farms might be doubted. Because a principle cannot apply in certain cases it is not inferred that it has no value, at least in those cases when its application is possible. With the above explanation I think we cannot deny the force of the argument of Gury repeated by Ballerini and Palmieri, we have quoted above: " Every man has by natural law a right to the fruits of his industry and ingenuity, for *omnis res fructificat domino*."

6. *Man's creation of external forms*

Even laying aside the idea as to effects, its being or not being part of the cause, e. g. creatures are not and have not been part of God; it appears that it is sufficient for one thing to owe its existence to another in order to naturally belong to it. When a thing owes its existence to a cause purely physical, the former belongs to the latter so far as that depends physically on this at the moment of its production; but not afterwards, when the preservation of its existence is due to other distinct causes independent from the first. Not so, when the thing owes its existence to a conscious and free cause; as in this case, although the effect does not depend physically on the cause except at the very moment of its production, it morally depends on it, and therefore, it belongs to it morally, not only at the first moment but also during its subsequent existence. The reason for this is that the personal cause not only morally produces the existence of the effect in the first instant, but also during the ones to follow, which like the first, have been foreseen, desired and determined freely in its existence by the will of the cause. Thus an artificer does not intend so much the momentary production of certain qualities in matter, as the permanence thereof, and for it foresees and anticipates the natural causes that will act upon it, when his personal action will have ceased. The painter will use the pencil for his sketches, and the oil for his finished pictures, and the sculptor will mould the clay or the gypsum for his studies, but to immortalize his work, he will resort to marble or to bronze; and future generations will pay tribute in admiration and, if it be possible, would recognize his dominion, not as to natural causes which will have preserved the work; but to the dead artist, whose physical

influence over it ceased centuries ago. If this free creation of the effect (we speak of creation, although there is preexisting matter here, but we use this word broadly, referring to the production of the form) does not give the cause the right to dispose of it; there is nothing conceivable that can give this right to anything, nor can it be understood how that right of disposal may have any meaning distinct from physical force, and even no reason could be adduced for attributing rights to God over the beings He has created from nothing.

7. *Painfulness of labor*

Another proof of the natural force of this title of ownership we may find in the sacrifice that all productive labor implies *per se*. God commanded in the beginning that man was to earn his bread by the sweat of his brow, and since then nothing can be produced by men without some painful effort, the intensity of which is often the measure of the affection that the laborer holds for his product, as if this were more truly his own, when it costs him more. It is the effect of a natural instinct. The mother for example, feels greater tenderness for the son whose coming into the world cost her the greatest pain. Even among the animals, the dog defends with more furious rage the bone he gets in the hardest fight. For men nothing seems to be so personal as their sorrows, and therefore nothing is for them to be more exclusively their own as the product of their pains. Hence no injustice seems to be greater than that which robs the laborer of the product of his fatigue: "crime crying to heaven for vengeance". Can it be held that this is purely conventional? No, because if that be not the voice of nature, then nothing is natural in the world.

Can it be contended that there is no essential relation between suffering the sacrifice and obtaining its results? Yes, it is true that we can suffer in vain; but it cannot be denied that there is a relation of justice, based in the very nature of things, according to which it is just that, if any advantage accrues, it should go to the sufferer. In order to see this relation a man does not need to think about social convenience, nor to compare different methods of distribution. So true is this, that if a worker lays claim to the fruit of his work which is denied to him, and somebody would come to help him by saying that he is right in his claim only because the plan whereby the laborer receives the fruit of his work is a good system of distribution, he would become indignant, thinking that such a man is joking; so remote, so complicated, so weak would this argument seem to him; so ridiculous would he judge the necessity of resorting to this long line of argumentation, when he is feeling the full force of an indisputable title in the fatigue of his muscles. It must be observed that sacrifice is not a title of ownership distinct from productivity, but an element of this last title, because the sacrifice of itself does not give a right to anything; it merely makes more sacred the right of the producer over his product, just as the greater are the pains of a mother the more closely is she bound to the son of her sacrifice, but not to the sons of others.

8. *Common consent*

All the peoples have felt the moral force of this right of labor and have considered that to be deprived of the fruits of one's labor is one of the saddest forms of injustice. The words of God to Adam: "*In sudore vultus tui vesceris pane*", (1) those of David: "*Labore manuum tuarum man-*

(1) Genesis, III, 19.

ducabis" (1) and those of St. Paul: "*Si quis non vult operari, nec manducet*" (2) confirm in widely distant times, with the authority of revelation, this dictate of the human conscience, namely, that the only normal title to enjoy the goods of the earth, is work. Solomon consoled the oppressed with the announcement that they would one day receive the hoped-for reparation for crying injustice, when he wrote: "*Then shall the just stand with great constancy against those who have afflicted them and taken away their labors.*" (3)

The very ancient law-maker Manu made work the only title of real property among the Indians: "*A field belongs to the one who cut down the trees, cleared the ground and labored upon it, just as the antelope belongs to the hunter who brought it down.*" (4) St. John Chrysostom in a severe criticism of riches asserts with his accustomed vehemence, that in general they are the fruits of injustice, remembering however Jacob's fortune he justifies it by saying: "*Dives fuit Jacob, sed accepta laborum suorum mercede.*" (5) Even the greatest enemies of private property have felt the force of this right which authors of the most opposed schools recognize and which, as Dr. Ryan says, is the general conviction of all people: "*So deeply fixed in the human conscience is the conception of justice and so general is the conviction of the laborer's right to his product, that most socialists have not been able to maintain a position of consistent economic materialism.*" (6) The right

(1) Psalm. 127, 2.
(2) 2nd. Thessal. III, 2.
(3) Wisdom, V, 1.
(4) Quoted by Taparelli, "Sagio Theor. de Diritto Naturale" Vol. I, p. 256.
(5) Migne, Vol. 62, p. 563. Hom. XII, In Epist. Ad.Timot. Primam.
(6) "Distributive Justice" p. 343.

to the whole product of labor was a doctrine exaggerated by the Saint-Simonians (1), by Proudhon, Rodbertus, and implicitly by Karl Marx, who pointed to the pretended necessary injustice of the capitalistic society which enriches the wealthy with part of the labor of the working man. Sismondi acknowledged this right and likewise the first English socialists, W. Thompson, T. R. Edmonds, C. Bray, John Gray (2). Polier also accepts it, at least as an ideal, in as much as he asks himself referring to Thunen: "*Et a-t-il voulu atteindre à la justice absolue, qui consiste à payer le travail au moyen de la part du produit qu'il a créée?*" Rodbertus says (3): "*Tout homme est propriétaire de la valeur qui'l crée*". Locke states it this way: (4)

"*Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person. This nobody has any right to but himself. The labor of his body and the work of his hands, we may say, are properly his. Whatsoever then, he removes out of the state that nature had provided and left in, he had mixed his labor with it, and joined to it something that is his own, and thereby makes it his property... For this labor being the unquestionable property of the laborer, no man but he can have a right to what that is once joined to.*"

Rousseau says that work is "*The only sign of proprietorship that should be respected by others in default of a legal title.*" (5). Böhm-Bawerk, quoted by Polier (6), recognizes that it is "*fort*

(1) "L'Idée du Juste Salaire", by Polier p. 223.
(2) Id. pp. 235—239.
(3) Quoted by Polier "L'Idee du Juste Salaire" p. 290.
(4) "Civil Government", Book II, n. 27.
(5) "The Social Contract" p. 20. English Ed. of E. Rhys, London 1916.
(6) "L'Idee du Juste Salaire" p. 323.

juste que le travailleur doit recevoir toute la valeur de son produit".

If to the popular belief, confirmed by the opinion of so many writers of such distant epochs, peoples and doctrines, we add the almost unanimous assertion of all the catholic authors who treat this subject and of Leo XIII, as we showed above, we may say regarding the principle that man has a right to the product of his faculties, that there is no other tenet in matters of justice, where the essential arguments may be supported with the authority of more universal accord of the learned, and with a more spontaneous and more vigorous consent of the multitude.

OBJECTIONS

Let us now examine some objections which are raised against the principle which we have been discussing.

1. Dr. Ryan tells us that the right of the producer to his product is not founded in intrinsic reasons, nor is it inherent in the relation between the one and the other:

"*It is determined by certain extrinsic relations. When Brown makes a pair of shoes out of materials that he has stolen, he has not a right to the whole product; when Jones turns out a similar product from materials that he has bought he becomes the exclusive owner of the shoes. The intrinsic relation of productivity is the same in both cases. It is the difference of extrinsic relation, namely, the relation between the producer and the material that begets the difference between the moral claims of the two producers upon the product.*" (1)

If we examine the case closely, we shall see that, if the relation of productivity is the same, also the

(1) " Distributive Justice " p. 149.

right that Brown and Jones derive from it is the same. Jones is the owner of the materials, because he has bought them, and is the master of the change of them into shoes, because he has produced it; Brown is not the owner of the materials, because he has stolen them, but in the same manner as Jones, he is the owner of the effects of his labor, because he has produced them. It is true that by the *positive human law* he may be punished with the loss of the fruits of his labor, for the robbery of the materials; but this very fact proves that the law considers him owner of these fruits, since no one is punished by taking from him that which belongs to another. By simple *natural law*, Brown would be obliged only to pay the owner of the material its value and to indemnify him for damages, if there were any, but not to lose his work. Even in *positive right*, if Brown proves that he has used the materials of another only by mistake, in such a manner that there is no reason to punish him, the law would not deprive him of the fruits of his labor. Then in the case suggested Jones and Brown derive the same right from the title of productivity: the ownership of their product. The difference is in their right to another thing which is not their product, namely, in the right to the materials.

2. After proving that the simple creation of an increase in the value of a thing, by the restriction of the supply, such as brought about by a monopolist, or by the increasing of the demand as does the inventor of a fashion, gives no right of ownership to its creator over the new value, Dr. Ryan asserts the following: (1)

"*Why has the shoemaker a right to the value that he adds to the raw material in making a pair of*

(1) " Distributive Justice " p. 45.

shoes? What is the precise basis of his right? It cannot be labor merely; for the cotton monopolist has labored in getting his corner of cotton. It cannot be the fact that the shomakers' labor is socially useful, for a chemist might spend laborious days and nights producing water from its component elements, and find his product a drug on the market."

Dr. Ryan refutes beyond question the pretended application of the right of productivity to the social production of the value of the land, but his words cannot be taken as an objection to the right of productivity which we have defended: thus it would be wrong to think that we are defending the right of productivity of unproductive works, which, whether they produce nothing, or produce things of no value, or which without producing any real value in the very things, only change the appreciation that others have for these things. In this case, the right of productivity is not wanting, but the productivity itself.

3. In another passage Dr. Ryan supposes that: (1)

"*Man's needs constitute the primary and most urgent title of ownership, and should be taken as the sole rule of distribution up to the point where all men are provided with a decent livelihood.*"

May we be permitted to observe in regard to this statement, that necessities do not appear to be a title of private property, since they produce no permanent link between the person and the external things. They can be surely titles of the right to use over things *nullius*, and even over the goods of others in the case of extreme necessity. They are without doubt the reason for the existence of private property in general, and what has made nature give us the means of acquiring this property; but necessities are not such a means, nor a title by

(1) " A Living, Wage " p. 77.

which a certain person becomes owner of a certain thing. Private property is a means for satisfying human necessities, but human necessities are not a means for acquiring private property. The means which nature has given us for this is labor, and not any kind of labor, but productive labor. For this reason Dr. Ryan (1) says that those alone have a right to take part in the distribution of the product who have taken part in its production. To this it seems to me logical to add that this signifies that they take part in the distribution, only as producers, and therefore, in proportion to their productivity; because every one of the producers is, regarding that part of the product he has not produced, in the same condition as those who are excluded from the distribution on account of having produced nothing.

We would also state here that, if labor is the natural means which God has given men to procure that decent livelihood to which they have a right, we ought to suppose that the labor of a normal man is, in normal conditions, at least sufficiently productive to realize this object; if ever it seems not to be so, that certainly means the existence of an error which ought to be corrected, either because another factor of the production is receiving a greater share than what he actually produces, or because more work than necessary is given to the production of things which are not useful enough. In order to satisfy the needs of the sick and of those who are unable to work, society has no right to touch the product of individual labor, but when those other goods are insufficient, which are the direct product of nature, or the result of certain social processes, so that they do not naturally belong to a definite person.

(1) " Distributive Justice " pp. XIII, 245 and 252.

4. It can also be objected that, to defend productivity as the only title of property in natural right, we do not take due account of the diversity of sacrifices and of efforts which different men have to put forth for the production of an equal thing; we give thus an excessive value to mere natural qualities which are the gift of God and which represent no personal merit. (1)

To this, we shall reply that when it is a question of distributing the product of labor among the producers, it is not a question of rewarding virtue, but to give to every man his own. Neither is it a question of rewarding an individual for what God has given him, but simply to respect the distribution God made of his gifts, distribution which is certainly the most sacred title of property that can be cited.

We have already seen, in our argument 8th, that sacrifice is not a distinct title, independent of productivity, but an element of it, which makes productivity more respected. Besides, the value in exchange of things is fixed naturally in such a manner that the things most difficult to produce are worth the most; so that the most difficult labors are better paid, and for the same reason are more productive. Of course, this refers to the difficulty of the work in itself, not in relation to the aptitudes of a definite person, so that the productivity of an individual is in general proportionate to the difficulty of the labor which he is capable of performing.

5. It is objected also that the right of productivity cannot be the supreme rule in the distribution of the product, because of the impossibility in many cases of judging adequately of the contribution of

(1) " Distributive Justice " pp. 247 and 248.

the many factors which were a part in the manufacture of the product. (1)

To this we would say that the difficulty of applying in certain cases a principle of justice does not take from it its value, nor that difficulty excuses us from the obligation of applying such a principle in so far as possible, even in those cases in which its full application is not possible. It is true that this difficulty is quite grave when it is a question of estimating the contribution of factors of distinct nature, as capital and labor, a subject which we shall examine latter. It is not so difficult to apply the canon of productivity to the many workers who take part in a process of production; in fact, if we consider that the value of the product is almost always proportional to the difficulty of producing it, we shall find that the difficulty of the operations offers a fair standard of the productivity of each workman, however different the nature of these operations may be. The intelligence, previous training, the degree of attention, physical energy, the patience necessary to perform it, are the principal elements which constitute the difficulty of each work and are generally easy to appreciate. In the long run, this greater or less difficulty of the different kinds of labor receives due consideration, for the silent work of the economical laws which spontaneously form a hierarchical order among the trades, in proportion to their relative hardship or productivity. If an office were paid less than what corresponds to the difficulty of exercising it, before long, the decrease in the number of those who practise it would correct the error, making its remuneration mount to an equitable level.

6 The canon of productivity requires "*equal pay for equal work*" and treats each worker as

(1) " Distributive Justice " p. 249.

an isolated unit. But this "*means that the interests of the great majority of the members of society, men, women and children alike*" are "*sacrificed to the interests of that comparatively small body of women who will never marry*". (1)

By giving to that small body of women only what they produce, the other members of society are not more sacrificed than if those women had never existed. We must remember that they also are persons and therefore cannot be treated as a means for the benefit of the others. Furthermore, they cannot receive a reward for their work, nor expend their earnings, nor save them, without benefit to the others in some way. Any exchange of services, or of commodities, implies mutual gains, even though one of the parties be an unmarried woman.

7. "*It may be worth while to discover how this principle works out in practice by examining a particular case. Let us, in imagination, flee to that favorite refuge of the economist, Robinson Crusoe's island. Let us, however suppose that two sailors, instead of one, have escaped from the wreck, and that, in escaping, one has been so seriously injured as to be permanently crippled. He can, we will assume, do a certain amount of work; but with his best efforts the fruits of his labor will still be small. What then is the principle of division which Robinson Crusoe ought to employ? According to Locke,* (1) *Crusoe has no obligations whatever to save his companion. Each is entitled to the results of the labor of his body and the work of his hands; and a fair division is one on this basis. Now it is the professed view of most contemporary moralists, and it is the*

(1) "The problem of a fair wage", by Frank Chapman Sharp. "The International Journal of Ethics" New-Hampshire, p. 390. July 1920.

(1) See our quotation of Locke p. 37.

nominal doctrine of the Christian church, that this conception of obligation is through and through false." (1)

Suppose that sailor were unable to do any work. Even in such an assumption, Crusoe would be obliged to support him. This obligation of supporting his companion when he cannot work, is not, however, the same kind of obligation, as that which compels him to pay his companion the value of his labor when the latter is able to work.

The nature of his obligation of giving his companion what his companion produces, is quite different from the nature of his obligation of adding to this amount what might be necessary for supplying his needs. The first one is an obligation of justice, the second, though not less constraining, is an obligation of charity. The violation of the first is robbery, in so far as he unjustly retains other's property; not so the violation of the second, for, in the latter case, he would retain his own property indeed, but in opposition to the principles of christian charity. By fulfilling the first, he complies with the moral obligation of yielding to others what belongs to them; by fulfilling the second, he complies with the moral obligation of loving his neighbour as himself. One of the practical bearings of this distinction is that the property taken in violation of the right of his companion will never really belong to Crusoe and he will always be obliged to make restitution; the goods however, he may have saved, through his failure to fulfil his duties of charity, do not cease to be his own. When christian moralists speak of right of property, they do not imply that the owner is without certain moral obligations to which he must conform in the use of his property. It is the doctrine of the catholic theologians of all ages that the owner will have to render an

(1) From the same article of Mr. Sharp p. 378.

account of the *stewardship* of his property; when St. Thomas recognizes to the proprietors the right of dispensing, "*jus dispensandi*" (1), he by no means contradicts his teaching regarding the obligation of the owner of sharing his goods with others.

Justice and charity are based on two independent and almost opposite concepts: justice is based on the concept that each person is essentially independent, an end in himself, and consequently, what belongs to him cannot be taken by others; charity, on the other hand, is based on the practical interdependence of men and on that bond of love which ought to embrace all men, as children of a common Father.

(1) Summa, 2da 2dae, q. 66. a. 2 and 7.

CONCLUSIONS ON PART I.

From the above, we believe we can make the following deductions, some of which have been already indicated in preceding pages.

1. In the concept of justice, "unicuique suum" there are essentially included for each individual two rights of economic value: the right to a reasonable use of the things of the world, and the right to possess all which he may produce by his labor.

2. The State cannot destroy or overlook these rights, without committing an injustice; but it can and ought to dictate suitable dispositions to protect these rights, ordering its exercise and aiding the individual, especially those who may most need it, to derive from these rights the best possible good.

3. The State can allot or authorize the apportionment among the individuals, of natural goods, if it can contribute to the common welfare, facilitating the well-ordered and beneficial use of these goods.

4. Private property of natural goods, as the soil, mines, deposits of oil, coal, etc. (as independent from the personal work that individuals might have incorporated on them) is a social institution created by the State on behalf of the common good. Therefore the State can and ought to limit or to suppress such a private property, if it is against the said common good, as when it becomes an

obstacle to the exercise by individuals of their right to possess what they produce, or an unnecessary limitation of their right to a reasonable use of the goods of the earth.

5. If the State suppresses or limits any of these ownerships it has created, it should respect the natural right of those persons, who have invested the product of their work in the acquisition of those goods conceded by the State to private ownership, as is the case of the present landowners. Consequently the State should indemnify such kind of proprietors.

6. In regard to private property, we ought to distinguish between private property by natural right and private property by social right; the first is directed towards the good of the individual, and the second towards the common good. The first is natural to human person and can only be limited when such a limitation is proved to be necessary for the common good. The second can only be established or maintained when the common good requires it. In other words: in regard to the first, the burden of proving the exigence of the common good rests upon those who wish to limit the right of private property, and in regard to the second, upon those who wish to establish, to extend, or simply to maintain it.

Part II

JUSTICE AND EXCHANGE

CHAPTER I.

VALUE

COMMUTATIVE JUSTICE AND VALUE

After studying the requirements of Justice in reference to the origin or acquisition of private property, we now proceed to analyze its requirements in reference to the exchange of private property already acquired.

Justice, as applied to exchanges, is called *commutative* justice, from a Latin word which means to exchange. No one can deny that this justice requires a certain equality between the two things exchanged, since without it, one of the parties would lose and thus be treated unjustly. Those things that have such an equality are said to have the same value; therefore, the equality required by commutative justice is equality of value. About this there is no question; but what constitutes value? This question must be answered if we wish to know the requirements of justice in regard to exchange.

As value is a quality of things, whether attached to them by men, or existing in their nature independently of human activity, it will help our research to investigate what qualities are necessary and sufficient in order that any thing may have "value". At first sight, we can say that nothing has value, if it is not useful, that is to say, if it does not serve as satisfying some human desire. But not all useful

things are valuable. They have no value, except in so far as they are in some way scarce, or in other words, when they cannot be attained by everybody without the overcoming of certain difficulties. These difficulties are presented to men either by nature, which requires human efforts for the attainment of certain things, or by other men who may desire to obtain the same thing, the supply of which is not sufficient for all. Therefore, only those things have value that are at the same time useful and difficult of acquiring. These two qualities are consequently necessary conditions of the existence of value; there is no disagreement about this; but which of these two conditions determines the amount or the quantity of value? About the latter question, the authors are divided, some upholding the claim of utility, others that of difficulty of attainment, while still others maintain a prudent neutrality, simply declaring that it is impossible to know which of these two elements is the more important. Let us examine them separately.

UTILITY

We must distinguish between the utility of an object in general, e. g., the utility of water, and the utility of an individual, concrete object, e. g., the utility of this particular quantity of water. We all recognize that water is a very useful thing, yet we may throw out this particular quantity of water as a useless thing. We would not cast out with the water the glass in which it is, nevertheless no one would deny that glasses are less useful than water. The utility attributed to a class of objects means only that each of the individuals of that class have the ability to satisfy certain human desires, but when we attribute a special utility to each individual of that class, then we imply that each individual article is not merely able but necessary to satisfy

a certain human desire which would remain unsatisfied if that particular object were destroyed. This only happens when the supply of such objects is limited and not sufficient for satisfying the wants of all who desire them. Only the utility attached to an individual object as such gives it value, as only individual things are objects of exchange.

Marginal Utility

Now the importance of the individual utility of a given object is measured, not by the importance of the highest human need that it may satisfy, but only by the importance of that human need which would go unsatisfied were this particular object destroyed. Let us supposed that M. Smith has four chairs all alike in his office. One chair is at his desk and satisfies one of his very important needs, viz that of sitting when he works. Another chair is near the first one and satisfies a certainly less important need of its owner: that of offering a seat to any visitor who may come to see him, and somebody comes everyday. A third chair is there in the case, which not so often happens, that two visitors come together. Finally, the fourth chair would serve the purpose of offering a seat, when three visitors happened to come in at the same time, which would very seldom be the case. It is evident that there is a great difference in the degree of importance of these four services afforded by the four chairs. If one of the chairs, that one at the desk, for example, were broken, would Smith be obliged to stand during his work? Certainly not. He would take to the desk one of the remaining chairs, and the consequence of such a disagreeable accident would be only that one visitor, or most likely Smith himself, would have to stand in the very rare case of three visitors arriving together. The consequence would be the same, if the broken chair

be one of the others, instead of the one at the desk: the breaking down of one of his four chairs would always mean to Smith the unsatisfaction of that least important need, that we have supposed was previously satisfied by the fourth chair. Therefore, the utility for Smith of each one of his four chairs is to have a seat for a third visitor who comes very seldom, as this is the only service, among the four services afforded by the chairs, which would be discontinued if one of the chairs, no matter which of them, be broken. This is called the *marginal* service, or the *marginal utility* of the chairs for Smith.

It is clear that the marginal utility of his chairs would have been less, the more the chairs Smith had had. So we can say in general that, if we have several objects of the same kind which we apply to different uses, and one of them disappears, we must discontinue one of such uses, but certainly we would not do so with the most important among them; the remaining objects will be applied to the most important of the said uses, and only that use which we care for the least would be stopped, until we get another object for replacing the one lost. The satisfaction that depended on the possession of that object seems to measure its real *utility* and the *utility* of any one of the objects of that same kind in our possession, since no matter which one of them might have been lost, the same so called "Marginal satisfaction" would have been discontinued. The utility so estimated is called the "marginal utility" of the object.

So that, all those concrete commodities whose possession means for their owner satisfactions of equal importance, have for him, the same marginal utility. Do they have for him the same value? Is it necessarily a matter of indifference to him whether he loses one or other of those commodities of the same marginal utility? This has been

often asserted by some defenders of the marginal-utility theory; but it is true only, if we assume that those objects *cannot* be replaced when lost, by the acquisition of a similar one. It is only in such a case, that the inconvenience actually produced by the loss of the object is the discontinuance of the marginal satisfaction. When the object can be replaced, the inconvenience inflicted by its loss is reduced to a lower figure: that is, the difficulty of replacing it. Very often we buy goods at lower prices than we would be willing to pay according to their marginal utility; so that we may have objects of different prices and of the same marginal utility for us, whose loss whould affect us quite differently. The loss of any of them will mean to us no more and no less than the cost of its replacement. It seems that the actual final utility that its owner attaches to any particular object which can be replaced by another similar one is not the marginal utility of the object as explained above, but the service it provides its owner in saving him the truble of replacing it, as he would need to do, were it lost. Should we call this *the actual marginal service* of the individual object?

Of course such service does not exist when there is no longer any need of replacing the object, because it has either ceased to be useful, or its utility is less than the difficulty of replacing it. But we refer only to those commodities which are deemed worthy of being replaced. In regard to them we think that their owners would not exchange them for a thing of greater marginal utility, but less difficult of acquiring. If they must lose one of two such reproducible commodities, they would retain without hesitation that one which is the more difficult of acquiring, not that of the greater marginal utility. Their attitude would be otherwise,

if there were no possibility of obtaining other commodities of the same kind, and they were under necessity of choosing which of their needs was to go unsatisfied. But such is not the case, when the satisfaction of the want really does not depend on the possession of an individual commodity, since it be capable of being replaced through the acquisition of another.

It is true that the marginal utility of an object for a given person determines the maximum value that he may attach to it; but the real value that he actually attaches to it is determined by the difficulty of obtaining it. If this difficulty were for a certain person greater than the marginal utility of the object, he would not acquire it, as it had no value for him. We can say, therefore, that the things that have any value for a particular person have it in proportion to the difficulty of its attainment, and never in excess of their marginal utility for the said person.

Utility for different Persons

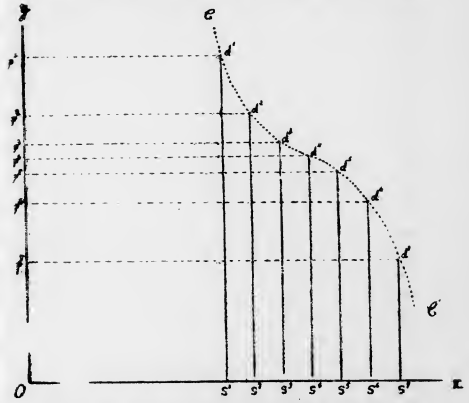
Any person can make a comparison between the intensity of the wants that he satisfies with different commodities, and likewise between the efforts and pains which their acquisition had cost him. He can also compare the pleasure of a given satisfaction with the pains and efforts of its acquisition; he can know whether that pleasure is or is not commensurate with these pains. (Since these pains are only the result of the sacrifice of other satisfaction.) But it is not so easy to compare the feelings of different persons. We have no common standard to measure their intensity. But we can compare the pleasure produced in several persons by a given thing with the pleasure produced by other thing in each of those same persons. We may know, for example, that Peter is willing to give two apples for an orange, and John is

willing to give three, and James four apples for the same orange. Can we deduce from this, that the pleasure that an orange gives to Peter is equal to $^2/_3$ of the pleasure it gives to John, and $\frac{1}{2}$ of that it gives to James? We cannot make such a deduction, unless we assume that apples, which are the term of comparison, are equally liked by the three, or rather, have equal marginal utility for them. If we change the terms of comparison and, instead of measuring their taste for orange in terms of apples, we measure it in terms of bananas, most likely the figures obtained would be quite different from those of the previous comparison. We may form therefore a relative scale of the marginal utility that a given commodity has for the different individuals of a group, in comparison with the marginal utility of an other commodity for each of those persons; but we cannot have an absolute scale of the marginal utilities of the same commodity for different persons. Such a relative scale does not give us any insight into the intensity of the wants satisfied, or any notion of the real utility of that given commodity for those different persons. The fact that Brown offers for a hat a less amount of money than Smith, does not prove that Brown needs the hat less than Smith, or that the marginal utility of hats is less for the former than for the latter; it proves only that the hat has less use for Brown than for Smith in comparison with the use that that sum of money has for them. This has been generally overlooked by the partisans of the marginal utility theory, who assume that the curve of the demand prices—which decline as the supply of the commodity increases—represents a declining of the marginal utility of the commodity. (1)

(1) For those readers who may not know what the so called *demand curve* is, we reproduce here a short explanation of it. It is well known that the larger the amount of a commodity

In many cases the marginal buyers, viz. those buyers who would not buy if the supply of the commodity happened to be a little smaller and its price a little higher, may have greater need of the commodity than other buyers who would buy at a much higher price; this can easily happen

offered for sale in a given place, the less the price that can be obtained for each portion of it. Flour, f. i. would have different prices in a given place according to the different amounts of it offered in the market. Let every eighth of an inch measured along the horizontal line O—X represent 10 tons of flour offered in that market, and every sixteenth of an inch measured along the vertical line O—Y represent 5 cents of difference in the price of a hundred-weight of flour. We suppose that



500 tons of flour (O—S¹) would be sold in that market at doll. 5 the hundred-weight (O—P¹), that 510 tons (O—S²) would be sold at doll. 4.80 (O—P²), 520 tons (O—S³) at. doll. 4.70 (O—P³), 530 tons (O—S⁴) at doll. 4.65 (O—P⁴) 540 tons (O—S⁵) at doll. 4.60 (O—P⁵), 550 tons (O—S⁶) at doll 4.50 (O—P⁶), and 560 tons (O—S⁷) at doll. 4.30 (O—P⁷). Let now the vertical lines S¹—D¹, S²—D², S³—D³, and so forth, be drawn, to indicate the demand prices for each

if the latter have less need of money than the said marginal buyers. Hence the marginal utility (1) of a certain larger amount of a given commodity may be greater than the marginal utility of a certain smaller amount of the same commodity if the marginal buyers of the larger amount are poor, and the marginal buyers of the smaller one are rich. Only by overlooking this fact can it be said that the difference in the value of the various commodities are due to differences in the degree in which the human desires for them are already satisfied, or to differences in their marginal utility. Such statements imply that the reason a given kind of diamond is 10,000 times more valuable than a loaf of bread, even in countries where, as in Russia at the present time, thousands of human beings go hungry and suffer of starvation, is because the human desire for such diamonds is 10,000 times less satisfied than the desire for bread, or because the utility of the last loaves of bread is 10,000 times less than the utility of the last diamonds of the given kind. And we must observe

amount of flour. D¹, D², D³, ... D⁷ are points on the curve of the demand prices for flour: we may call them *demand points*. If we could find demand points in the same manner for every possible difference in the quantity of flour, we should get the whole continuous curve C—C¹ as shown in the figure. So that this demand curve indicates the variations in the amount of any commodity, that can be sold at any given price, or also, the variations in the price that can be obtained for any given amount of the commodity.

The same figure is used to illustrate the different prices that a given person would be willing to pay, for different amounts of the same commodity, or also, the different amounts of a commodity that the same person would be willing to buy at any of the different prices at which it may be offered. In this case indeed, the demand-curve shows also the declining of the marginal utility for that person of each increasing amount of the commodity.

(1) Marginal utility of a commodity in general can only be the marginal utility of the commodity for its marginal buyers.

that precisely those hungry people are among those marginal buyers of bread who would buy less with any rise in its price.

Money is the commodity universally adopted as a term of comparison to estimate the value of things for different persons. Thus, when we say that a given thing is worth two dollars for a group of persons, we mean that the marginal utility of that thing for such persons is equal to the marginal utility of two dollars for them. Since a dollar has very different marginal utility for different persons, we cannot deduce that that thing has the same marginal utility for each of those persons, nor that it has for them less utility than for other persons for whom it may be worth five dollars. It happens that the marginal buyers of a commodity at a given price, are those for whom the marginal utility of the commodity is equal to the marginal utility for them of the quantity of money indicated by the price. Therefore it is not exact to say that the commodities of the same price have the same marginal utility for their marginal buyers; all the more so, since money is the commodity that has the most unequal marginal utility for different persons. It varies from person to person in proportion to the amount of wealth they possess: for the rich it is very little and for the poor it may mean life itself.

As the price of a commodity rises, the number of people for whom the utility (1) of the commodity is greater than the utility of its price, namely the number of its buyers, will accordingly decrease; on the contrary, when the price declines, more and more persons think the utility for them of the new price is less than the utility of the commodity, and consequently decide to buy. At any rate, the price of a commodity must be a quantity of money

(1) Hereafter, by the word " utility " without qualification, we mean marginal-utility.

whose utility for a sufficient number of persons according to the supply of the commodity on the market, is less than the utility of the commodity for them. So that the utility of any commodity for those among the necessary buyers, for whom this utility is the least in comparison with the utility of money, determines the maximum equal price that can be asked for any given supply of that commodity. But why is such a price also the minimum and why should all those buyers get the commodity at an equal price? These are effects of the competition between the buyers or between the sellers, as we shall see shortly. Let us observe, however, that such competition does not fix an equal price for all buyers and sellers alike by equalizing for them all the utility of the commodity or of the money, but by equalising for all the difficulty of obtaining that commodity. We pass now to study such difficulty of attainment and its influence in fixing the value of things.

DIFFICULTY OF ACQUIRING

The difficulty of acquiring is made up of the different obstacles which stand in the way of a man's acquisition of a given thing. These obstacles can be divided into three groups: 1. Obstacles presented by nature, which can be called difficulties, or *cost of production;* 2. Obstacles arising from the circumstance of other men striving to acquire the same thing for themselves, or difficulties of *competition;* 3. Obstacles placed to the buyers by the present owner of the commodity, which may be called difficulties of *monopoly*. Of course, these obstacles are generally found combined in the concrete difficulties to be overcome in the acquisition of any thing; but to treat them separately will help our analysis of the elements of value.

Cost of Production

The ordinary difficulties that men have to overcome in having a given thing produced at a given place and time can be reduced to the following: 1. the difficulty of procuring the use of the necessary instruments of production, 2. the difficulty of manufacturing the commodity, 3. the difficulty of transporting it to the given place, and lastly, 4. that of waiting, without disposing of it, until the given time comes. All the human efforts expended, which were necessary for effectually surmounting these difficulties, must be rewarded by the consumer who is going to enjoy the advantages of the finished product; otherwise those efforts would not be put forth again. They are the only human element embodied in the commodity, the only element with a moral value, and also the only factor among the many causes of the commodity that would not operate again, if not justly compensated. An absolute justice would require that the creator of those efforts be rewarded with a commodity produced by other men with an equal amount of effort. By what just standard then, may we measure and compare those efforts?

A sympathetic feeling, perhaps, inclines some people to think that human efforts should be measured according to their painfulness. Such a criterion evidently takes no account of the different productivity of human efforts, that is, their different effectiveness or power for transforming nature and adapting it for the satisfaction of human desires: obviously the more human faculties are developed and educated, the greater services can they render, and that, too, with less exertion; the more can they effect, in the external things, even difficult improvements at the cost of less pain and fatigue. A human action can be considered as objectively more difficult, when the person who performs it

requires to have more highly developed abilities of the highest order, for example, keener intelligence, stronger character, greater science, art or skill. Speaking of the objective difficulty of a given action, the element of painfulness ranks only as a secondary criterion, as helping us only to appreciate the difficulty of that action in comparison with other actions which require the same abilities. But the element of painfulness takes the first place, when we speak of the subjective difficulty of an action for a given person. This distinction helps to explain why, although it is much easier, in itself, to clean a pair of shoes than to write a good poem, there are poets who would write ten poems rather than to clean once the shoes of their neighbour.

But not all the human efforts necessary for the making of a commodity, would cease to be put forth, if they were not adequately rewarded, and consequently not all are adequately included in that cost of production, which generally must be paid by the consumer, as the difficulty of acquiring such a commodity. If a class of laborers would be obliged, by circumstances beyond their control, to work permanently for a salary inferior to what would correspond to the difficulty of their task, the unpaid surplus of their efforts ceases to be counted in the difficulty of the acquiring by others of the product of their labor. The employer does not pay for that surplus, and it ceases to be part of the cost of production, which is in the long run the determinant of the price of goods. A commodity cannot command for a long period of time a much higher price than its cost of production, the work of the employees being represented therein by their salaries; because the excessive profit resulting from such a difference between the current price and the cost, will attract capital to the pro-

duction of that commodity until the increased supply will reduce its price to the normal level, that is, to the cost of production. The whole theory of *surplus value* of Karl Marx rests on the ignoring of this fact, a fact which is nevertheless, an essential point of the classic labor theory of value, upon which he pretended to build his doctrine. He attributes influence in the price which the consumers must pay, to that surplus of efforts which, he assumes, have been already given gratis by the workers, and which also he assumes, does not have to be paid in order to continue being made; but he denies any influence in the value of the commodity to those services of capital which are paid through interests, and which, we shall see presently, would certainly be discontinued, if not adequately rewarded. He seems to believe in a sort of mysterious self-imposing force of labor, which obliges the consumers to pay its full value, despite the general fact, supposed by him, that the laborers are giving up gratis a large part of it. Moreover it should be noted here that the cost of production which is included in the difficulty of acquiring a commodity through exchange, is the cost of production of such a commodity at the time of the exchange. If a concrete portion of a commodity was actually produced at different cost than that prevailing at the time of its sale, the former cost no longer represents the efforts that its possession will save the buyer, nor the efforts which the seller would have to put forth in order to replace it.

Finally, let us remember another recognized fact in regard to cost of production; the several portions of a given commodity are very often produced at a very different cost. But the cost of production affecting the price of the commodity, is only the marginal cost, that is the cost of those necessary (1)

(1) necessary to satisfy the demand.

portions of the commodity which would not be produced if there were any diminution in the price. When several concerns therefore produce the same commodity at different cost, the difficulty of acquiring that commodity for the consumers will be measured by a price sufficient to repay the more costly production by those less effective concerns, whose products are nevertheless necessary for satisfying the consumers demand for such a commodity.

Competition

When a person has to overcome the competition of other buyers who wish to obtain the same article that he desires, he must put forth an additional effort in order to have his own desire prevail. This additional effort will be greater according to the number of the competitors, their economic power, and their greater or less desire to get the article sought for. (1) To exclude a competitor it will be necessary to offer for the coveted object a sum of money greater than what he is able or willing to give. Therefore, if there are fifty five buyers for fifty similar objects, the price of the objects will rise to an amount of money larger than that which for five of the buyers is possible or convenient to pay. In such a way, competition may increase the difficulty of acquiring any commodity.

It can also diminish such a difficulty. For instance; if there are fifty buyers for fifty-five objects which their owners have to sell, the latter will compete with one another in selling each his

(1) Among animals and also perhaps among savages, the greater or less difficulty of competition is overcome through a greater or less physical exertion and the victor in the fight gets the coveted object; among civilized people, it is overcome through the yielding by the person who obtains the disputed object, of another object of greater or less value according to the competition being more or less hard.

own article; and the price will decline to a level at which the sellers will have no longer to compete; that is, to a sum of money, the utility of which, for five additional buyers, will be less than the utility of the objects for them.

In every large market there is a different number of buyers, or at least, different degrees of demand corresponding to each difference in the price of a given commodity. The marginal utility of an article being so varied for the individuals of an entire population, the utility of a given amount of money also varying with them, every change in the price of a commodity increases or diminishes the number of those for whom the utility of the article is greater than the utility of the quantity of money indicated by its price.

If we assume that an article is going to be sold at a price equal to its cost of production, and that its supply for sale is such that the utility of its last portion is much greater for its buyer than the utility of its money price for him, we should assume also that there are other persons for whom the utility of the article is greater than the utility of its price, though not so much greater as for the supposed buyer, and that they would compete with him for the acquisition of the last portion. To eliminate their competition, the price of the article will necessarily rise to that quantity of money whose utility will practically equalize the utility of the object for the said buyer of its last portion or marginal buyer. This price being high in relation to the cost of production, will result in a larger production of the article. Each additional portion of it will satisfy an additional buyer, thus making unnecessary the elimination of one of the possible competitors, and diminishing, for the same reason, the difficulty of acquiring the object, until the price shall have declined to the

level of the cost of production, when the supply of the article will be sufficient for all those possible buyers to whom the article is worthy of its cost. In all cases the utility of the commodity and that of its price are practically equal for the marginal buyers; but only for them; in all cases and for every one of the buyers, the price and the commodity are equally difficult of acquiring, and any change in the competition, or in the other obstacles to be overcome in the acquisition of the article, produces a corresponding change in its price, that is, renders it exchangeable for an amount of money correspondingly more or less difficult of acquiring.

Monopoly

When a commodity cannot be obtained but from one source, a physical or moral person, its value, or the difficulty of acquiring it, for people in general, depends on the will of the monopolist, who, therefore, can fix such a price as may give him the greatest net profit. We do not need to show here that such a price is not always the highest possible one.

Monopoly takes innumerable forms: control of raw material, or special native mental or physical aptitude, or patent right, etc., and for a given time and place many sellers may have somewhat of a monopoly, which gives them the power to increase prices, adding thus new obstacles to be overcome by those who wish to acquire that given commodity. But let us disregard the influence of monopoly on value, as being abnormal and arbitrary.

CONCLUSIONS ON VALUE

Resuming, now we say: 1. A commodity has value in exchange only when its utility is greater for a certain person than the difficulty of acquiring it. 2. Its marginal utility for each person deter-

mines the maximum value that such a commodity may have for him, but its difficulty of acquisition (indicated by its marginal utility for the marginal buyer) determines for all the actual price which must be paid by anybody who wishes to acquire it. 3. In order that a given supply of a commodity may have a given price, it is necessary that its marginal utility be somewhat greater than the utility of such a price for a sufficiently large number of buyers. 4. Among valuable commodities, those have equal value in exchange that are equally difficult to acquire. 5. For commodities which can be reproduced indefinitely, the difficulty of acquiring is, in the long run, equal to their cost of production. 6. The difficulty of acquiring a given commodity in a given market, is determined by the sum of money offered by that buyer who offers the lowest price, within such a group of highest bidders which is sufficiently large for buying the entire supply to be sold. 7. The price of any commodity is that amount of money whose marginal utility is equal to the marginal utility of the commodity, for its marginal buyers. 8. The exchange value of things includes two elements: the difficulty, or cost, of production and the difficulty or cost, of competition. The latter is the price of the privilege of obtaining a thing which cannot be obtained by all those who desire it. 9. In paying for anything, we pay either for the efforts of others, or for the privilege of getting something which cannot be got by all who are willing to pay for those efforts.

CHAPTER II

JUSTICE AND PROFITS

If we now proceed to apply the moral test and the requirements of moral justice to the foregoing economical laws of exchange, we shall find that they approach as much as possible the ideal of commutative justice.

We assume that the objects of private property in exchange are completely and rightly owned by the exchangers, either because they are their producers, or have already acquired them through previous just exchanges. We assume also that we are dealing with exchangers who have towards one another no other obligations than that of making a fair exchange. Under such conditions there is no question that justice requires perfect equality of value between the things exchanged. This equality of value as a requirement of commutative justice has been demanded by all Catholic theologians, though it has not been definitely explained what constitutes that value. They have merely repeated in this statement one of those generally accepted truths that common sense teaches everybody and to which the mind gives almost spontaneous assent, having yet only a very vague idea of its concrete meaning. After reaching a conclusion about what constitutes value in exchange with the help of the current explanations of political-economists, we can deduce that com-

INTENTIONAL SECOND EXPOSURE

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mutative justice requires that objects exchanged be equally difficult of acquiring.

Should this equality exist between the marginal utilities of the objects exchanged? But, as this has many different meanings, let us examine them separately. — Should the required equality exist between the utilities of the two objects for their new owners, viz. should the equality be necessary of the utilities acquired by both parties in the exchange? This would mean that a poor man who makes an exchange with a rich man should give more than the rich, for in general things have much more marginal utility for the former than for the latter; this would mean that a starving person would have to pay more for a loaf of bread, than those who do not need it so much. — Should the equality be between the yielded utilities, viz. between the utility of each object for the person who gives it? Then the rich should always pay more than the poor, and things would have a different price for each buyer and with each seller too. — Should the equality exist for each party between the utility yielded and the utility acquired by him? Then the exchange would not take place, for lack of desire of the parties, who are supposed to give an article for another which is not more useful to them. — Should the utility of each object be equal for both parties? Then also the exchange would be impossible; since, f. i. Peter could not buy the horse of John for twenty dollars, if John had not the same use, as Peter, for the horse and for the twenty dollars; but in such a case John would not sell, inasmuch as he would have, as Peter, less use for the twenty dollars than for the horse. There is still another possible meaning of such equality: should the marginal utilities of both objects be equal for both parties, viz. should at the same

time, each object be equally useful for both parties, and each party have equal use for both objects too? But, as it is evident, this last possible interpretation joints together all the inconveniences and impossibilities of the previous ones.

Therefore, we see that the objects to be exchanged for one another, must be equal in value, but unequal in marginal utility for the exchangers; and we understand now less than ever, how can it be said that marginal utility makes value in exchange, without consideration of the difficulty of attainment. The marginal utility for the barterers of the two objects they exchange has no influence in their having equal value; but the marginal utility of each of those objects for their respective marginal buyers is estimated by them in the same quantity of money. Such appreciation by those unknown personages has of course no influence in the way in which our barterers estimate the utility of their objects, but it represents the limit of the natural competition that has caused the prevailing price of those objects; and the circumstance of being such a limit where it is, shows that the objects referred to, are now equally difficult of acquiring.

Such is the only possible equality between the objects of any exchange; the moral value of such equality is that when it prevails both parties save one another the same trouble.

Many writers have thought this equality should refer to the difficulty of production of the two commodities in exchange and we have already recognized that it would be the perfection of justice that men should exchange their products according to the amount of efforts necessary to produce them. Of course, it would be an ideal condition in which the difficulty of acquiring an object would conform

always to the difficulty of producing it. But that is only possible in an ideal world, in which the producers could foresee so perfectly the desires of the consumers that each product would be manufactured only in such amount as would exactly correspond to the number of consumers willing to consider it worth the cost of its production. Since that is impossible in this world of ours; whenever the produced supply of a given commodity falls short of its demand, the possession of such an article will save its buyers, the trouble of production, and besides, the necessary trouble to be preferred over all those for whom the supply of the article is not sufficient and yet who would desire to secure it at cost price. This additional advantage then, really destroys the equality between those articles which are scarce and those others which are abundant, even when they have the same cost of production. To exchange one of the former articles for one of the latter would be an exchange in which one of the parties would be particularly favored to the disadvantage of the other. It is a fact that to obtain the scarce article is a kind of privilege or special advantage, that not all the would be buyers of the article can enjoy; it seems just that those who wish such a privilege should pay for it.

The moral justification of such a standard of prices finds confirmation in the fact of being inevitable and in its convenience for the common welfare. People could not be successfully prevented from paying for that difference in scarcity, even if the law attempted to oblige them to exchange their articles on the basis of cost of production and without any allowance for such a difference. If we suppose that the production of an article runs short and that the producers are forbidden to raise the price, then the result of the excessive demand

will be that the consumers will have to wait, perhaps two or three months in order to have their orders attended to. But those among them who are willing to pay more in order to get the article without delay, not being allowed to offer a higher price to the producers, will now offer it to those buyers who are getting the earliest produced articles and for whom the inconvenience of waiting may mean less than the sum of money offered. Should the situation last long enough, every buyer for whom the actual value of the article, at the time of the delivery to him, is less than that of its price plus the additional amount of money now offered by other buyers, will sell that article and order another to be delivered three months later. If three months later the circumstances are the same, he will repeat the same business. The final result will be that actual consumers will generally pay the same price that competition would have fixed if there had been no interference of the law, that is, such a price that will prove sufficient to restrict the demand to the amount of production. The effect of such a law would be to deprive the producers of part of the present value of their product and to give it, not to the actual consumers, but to those buyers who would not buy in a competitive market and who now become a sort of middle-man between producers and real consumers. Such laws can only be justified in those extraordinary circumstances where public authority is compelled temporarily to regulate, not only the price, but principally the consumption of certain articles, as being the only way of securing that part of the population be not deprived of the necessities of life.

We said also that high prices for scarce commodities are convenient for the common welfare; in fact, they are in normal conditions the best antidote

against that very scarcity, inasmuch as they attract capital and men to an increase of production of such commodities.

Has the producer a natural right to that portion of the price of his product which is over and above the cost of its production? We think that the producer's right to his full product, a right which we have already proved, also includes his right to the full value of such a product. It seems that he cannot be full owner of the product without being also owner of its full value. He has not produced that part of the value of the product which depended on the desires of others, but he has produced the entire thing which is the object of those desires. He has not put forth in producing the thing all the efforts that the consumers need to put forth in order to acquire it, but through production he has actually acquired that thing, and by giving it to the buyer, he, the producer, is saving him not only the necessary efforts of production, but all the necessary efforts of acquisition. If to have that scarce product is a kind of privilege and this advantage has its own value, the producer is the real holder of that advantage and when he yields it to a certain buyer he gives that which is his own and consequently has a right to be paid for it.

The State therefore cannot confiscate that portion of the price which is in excess of the cost of production on the ground that it has not been produced by the producer of the article. Nevertheless, we do not intend to deny to the State the right of imposing heavier taxes on the profits resulting from scarcity-prices: it is perfectly justified in doing so by the general canons of taxation. which allow heavier taxes whenever the sacrifice involved is less.

So that profiteering on account of high prices is not necessarily an immoral thing: when the high

prices are the natural outcome of an excessive demand, they are just, and the producers justified in taking them. What is really unjust and should be punished by law is the concerted restriction of output by producers for the purpose of obtaining excessive profits or the restriction of the market supply of an article realized by a monopolist with the same purpose. When concerns are found guilty of such a concerted restriction, all their unjust profits should at least be made forfeit. Those concerns which are getting for their products a higher price than the cost of production, should, if necessary be obliged by the State to increase to the maximum their output. But such State interference can be necessary only in cases of conspiracy on the part of producers for restricting production. During recent years the American producers have been unable, even using all their power of production, to satisfy the immense demand of the world markets seeking American products, because of the almost complete stoppage of European industries. Furthermore, the demand at home had increased enormously as a result of the higher salaries and the general prosperity resulting from the many billions spread over the country by the manufacturing of war materials and the production of food for the European nations. The enormous profits necessarily resulting from the impossibility of adapting the production adequately to such huge demand, did not therefore constitute a crime.

Against State confiscation of excessive profits we must finally say that it would be an unfair discrimination against the producers: because, if these profits are for them an unearned income when the production runs short, we must not forget that there are a kind of consumer's profits which go to the consumers when the production grows too large, thus bringing the prices below cost of

production, and that such consumer-profits are also an unearned income. If it is not possible to take from the consumers these profits, nor to indemnify the producers for the corresponding losses, it is unfair to deprive the latter of their advantages when the prices change in their favor.

Of course, we assume that the scarcity of the product is not due to a voluntary restriction of its production, or of its market supply, and we conclude that the producer has full right to keep his profits, as an additional value coming to a thing which fully belongs to him.

We have been referring here to those profits that result from scarcity of the product and competition among the buyers, but our reasons for justifying them apply also to those profits which result for certain more effective producers from the fact that their cost of production is less than that of the most ineffective concerns whose production is nevertheless necessary for satisfying the demand. But these reasons would not justify such profits when the production of the ineffective concerns is only necessary because of the voluntarily restricted production of the more effective ones. In such a case, there is an unnecessarily high and artificial cost of production, which does not justify the corresponding price of the product any more than an artificial scarcity could do.

We defend here the natural right of the producer to the new value of his product; nevertheless, we have denied to the landowners any natural right to the new value of land or of natural goods: it is because, according to our conclusions of the first part of this work, private ownership of land, as independent of the ownership of the labor incorporated to it, is a civil institution and should not be extended farther than is clearly convenient for

the common welfare. But the private ownership over an individual's own product is a right not only anterior to the State, but its protection is one of the ends for which the latter exists.

Nevertheless, if we maintain that scarcity prices are not opposed to commutative justice, viz. that they do not violate the purchaser's right to get in exchange for his money a thing of equal value, we do not mean that the tolerance by Society of the said scarcity prices, never can be unjust as violation of *Distributive justice* (1). In fact distributive justice requires an equitable distribution of the goods and opportunities of life, and put upon Society the obligation of protecting that individuals' natural right to a reasonable access to the goods of the earth, to which we referred in the first part of this work. Now, if in a given place the supply of one of the necessities of life runs exceptionally short, and for a time there is no possibility of remedying its scarcity, the rich people will offer very high prices for the scarce article, in order to assure for themselves the customary supply of it; in this way the mayority of the population can be completely deprived of a necessary article. The sellers of the

(1) In our Part I, we defined *justice*, as the virtue which obliges us to give to each one his own, *unicuique suum*; but this word *suum*, or *his own*, can be taken, either in a strict sense, as meaning only those things that really belong to a given person, or in a wider sense, as including those things that really do not belong to a given person, but that should belong to her. If taken in the first sense, *unicuique suum* is the formule of *strict justice*, often called *commutative justice*, because it regulates the exchanges; if taken in the second sense, *unicuique suum* is the formule of *general justice*, called also, either *distributive justice*, which imposes upon Society the obligation of making an equitable distribution of the social advantages and burdens, or *social justice*, which imposes upon individuals the obligation of giving to Society the services and contributions that the common good requires. The violators of *strict justice* are called robbers and are obliged to make restitution, as retaining things of another: whereas the offenders against *general justice* are ordinarily not so.

article would not do wrong by accepting the high price which is offered to them; nor would the rich people wrong anybody by offering for the article a sum of money which is of less utility for them; but the public Authority would indeed wrong the people, by not interfering to assure for everybody the possibility of getting al least the indispensable portion of an article of prime necessity. In such a case the Authority is required by distributive justice to limit the amount of the scarce article that everyone is allowed to consume, banishing by this very fact the immediate cause of the high value of the article, that is, the competition among the buyers. Consequently, the Authority would need to fix a price for the article based on its cost of production, since by stopping the competition among buyers, the normal ways of price-fixing would have been put an end to. Social justice would strictly oblige the owners of the said scarce article to yield their right to free disposal of their property, to the command of the Authority, compelled in its turn to protect a more fundamental right of the other citizens. But cases like this are absolutely exceptional and must not alter our foregoing contention for normal times.

CHAPTER III.

INTEREST ON CAPITAL

ITS JUSTIFICATION

After examining the right of the producer to the full ownership of his product and his right to exchange it for its full value, we may ask now whether the producer (or whosoever through an exchange may have succeded him in his ownership) has also the right to exchange, not the product, but merely the use of that product for a given time.

St. Thomas presents in the following words the common opinion of the Catholic writers in reference to this matter:

"*We say firstly, that he who is owner of a thing is also owner of the use of that thing... Furthermore, we say thirdly, that the owner can transfer the use or the fruit of his property. We say also fourthly, that the real owner of a thing, as he can give or sell the property of the thing, viz. the fruit and use of the thing for all time, so he can also give or sell it for a fixed and particular time. All these rights are included in the very reason of ownership.*" (1)

(1) "Dicimus primo quod qui dominus est alicujus rei, dominus est et usus ejusdem rei. . . . Dicimus insuper tertio quod dominus potest transferre usum et fructum propriae rei. Dicimus etiam quarto quod verus dominus rei sicut potest dare vel vendere proprietatem rei, vel usum seu fructus alicujus possessionis simpliciter quantum ad omne tempus, sic potest dare vel vendere quantum ad tempus determinatum vel particulare. Omnia ista probantur per ipsam rationem (ominii." (Opus 66, C. 9.)

This right over the use of the thing owned seems really to be contained in the very idea of ownership so that, an ownership without right to any use of the thing would not be ownership at all, and a full ownership is unintelligible that does not include the right to the full use of the thing. When the owned commodity is such that it can be used without being destroyed by its very use, its use is a permanent source of benefit for its owner. It seems beyond question that, as St. Thomas says, if the owner can sell the thing itself, that is, the right to all the future benefits of it, he can also sell part of those future benefits, and therefore the benefits resulting from the thing during a certain time. It seems that to deny this right of the owner is to deny the right of ownership itself. Hence we have proved the full right of the producer to the product of his activity, we must recognize his right to sell for a given time the use of his product, without selling the product itself, whenever this last can be used without being destroyed by its first use.

Naturally, this right of selling the use of a commodity, without selling the commodity itself, cannot apply to those commodities whose use is synonimous with their destruction, namely fungible goods, like food, drink etc. But what about capital? It is now beyond dispute that capital is not destroyed by its use, and consequently there is no difficulty in making a distinction between the right to use it permanently and the right to use it for a certain time, and hence we can sell the latter without selling the former. Capital is an amount of wealth which is used for the acquisition of more wealth, and the capital remains unchanged when its value remains the same, the substitution of the concrete goods in which it is embodied not affecting its nature. Capital is not money, execpt in very few cases. Money represents

and measures capital, but capital is machinery, raw-material, buildings, ships, canals, cattle etc. If everybody has the right to get a payment for the temporary use of his machinery according to the value of that use, not only in proportion to its depreciation in the use, why should one not have an equal right when he gives to another the money necessary to get a similar machine and to use it for some time? Besides some verbal distinctions, the only real difference between the contract of renting a machine and that of loaning a capital, is that the second contract always includes implicitly an accessory contract of insurance; so that the borrower must respond to the lender for any loss of his capital. This accesory contract is not necessarily included and understood in the renting of a machine or other rentable commodities. But as it is evident, this difference has nothing to do with the value of the use of the capital nor with the justice of paying for it.

The Church has condemned the getting of payment for the use of consumptible commodities, as distinct from the commodities themselves, just as when interest is asked in the contract which the theologians call *mutuum*; but the loaning of capital cannot be called *mutuum*, which is a loan for consumption, or a loan of a fungible commodity. Anyhow, the right to get a payment for the mere use of houses, machines, elevators, etc., whereby as distinct from money, nearly all the existent capital is made up, has never been denied by the Church or any Catholic theologian.

That the loaning of money for commercial or industrial purposes is not a *mutuum* has been the opinion of Ballerini, (1) Lehmkuhl (2), Van Roey (3)

(1) " Opus Morale "n. 697—706.
(2) " Theologia Moralis " n. 1105—1107.
(3) " De justo auctario ex contractu crediti " p. 219—297.

Tanquerey (4) and Catholic theologians generally, who recognize that in such kind of loans money has a use, which can be appreciated independently of the value of the money itself "usum praetio aestimabilem" (Tanquerey).

Recognizing the utility of capital as an instrument of production, it is difficult to understand, how the right to dispose of the utility of such an instrument, can be denied to its owner, without denying his very right of ownership.

The person who has the right to sell the use of a thing has of course the right to get the full value of that use; but what is this value, if there be such at all? The use of a commodity, like any other thing, as we saw above, only has value when it implies utility and there is difficulty in acquiring it. There are some uses of commodities belonging to others, which can be of great utility, but whose acquisition offers no difficulties; these are called *innocent uses*, because they do not interfere with the right of the owner; they have no value in exchange: such are for instance, the use of the shadow of another's tree, that of the neighbour's fire for lighting our lamp. These and similar uses have no value; but the value appears the moment we cannot enjoy the use of a thing without excluding others who would like to enjoy the same use. So that the natural value of the use of any commodity, capital included, is determined by what is sufficient and necessary for excluding all those others who must be excluded in order to obtain that use. The same rule which defines the value of any other thing.

Therefore the interest of capital, the rent of a house, or the hiring of a machine, must be such amount of money, or other commodity, whose utility for any of those persons to be excluded, is

(4) " Summa Theologiae Moralis " Vol. III, p. 418.

greater for them than the utility of the use of the machine, the capital, or the house. Consequently, as we already saw, in the selling of the use of an article, as in the selling of the article itself, the utility of the price and the utility of the thing bought are practically equal for the marginal buyer. If the interest of capital, or the rent of houses, is higher than the said natural interest and rent, we would have no borrowers, nor tenants, in sufficient number, for the amount of capital offered for loan, or for the amount of houses for rent. If the interest and rent are lower, we would have neither enough capital, nor houses, to supply its increased demand.

Accordingly, State interference with the high rents of houses would not be justified when such high rents are not due to a monopolistic abuse, brought about, f. i. through a combination of the proprietors, but are simply the effect of an excessive demand for houses. This greater demand may come from new inhabitants, or from numbers of old inhabitants who wish to improve their dwelling conditions. In such a case the interference by the public authority forbidding the increasing of rents would be a discrimination against the owners and against the new would be tenants. Furthermore it would prove to be contrary to the common good, inasmuch as it would be an obstacle to the real remedy of the situation, namely, the building of new houses, which otherwise would be encouraged by the high rents.

But this is true only in normal conditions; in extraordinary ones, it may happen that, for a period of time, no high rent would attract any important amount of capital to the building of houses, because, for instance, of an exceptionally high cost of materials, and the interference of the Authority would be the only way of avoiding

undue hardness to a great part of the population. In such cases, for the same reasons which we referred to, speaking of extraordinary scarcities of articles of prime necessity—and "dwellings" is one of them—the Authority would be justified and even obliged to interfer with the freedom of proprietors to let or not let houses and rooms and with their power to give notice to their tenants or to increase their rents.

THE ABOLITION OF INTEREST ON CAPITAL

To pay a price for the use of a commodity is as natural, as to pay for the commodity itself. Its use will have value as long as the commodity itself will have it, that is, as long as the supply of the commodity will be insufficient for all those who would like, if possible, to get, or to use it. As long as men desiring the use of a given commodity may not be able to buy it, or to buy at once all the future use of the commodity, many of them will content themselves with buying for the time only a part of that future use, that is by hiring such a commodity. As long as a commodity, or the use of a commodity, has any natural value in exchange, that value must be greater than the utility of that thing for those for whose satisfaction its supply is not sufficient. Can the State change this very nature of things? Evidently not. The State cannot change natural values, which depend on human desires and on qualities of external things; but it can transfer the possession of those values from one person to another; it can oblige people to give gratis part of their property to somebody else; in this way the State can fix artificial prices and suppress the interest on capital.

Has it also the right to do so? In the first part of this essay, we saw that there is a natural private property, which the State cannot suppress without

injustice and which it is bound to protect, that is the ownership of the individual over the full product of his activities; afterwards we saw that the full ownership of any thing means the right to its full value, the right also to its full use and consequently, the right to the full value of its use. Therefore the State would violate natural right, if directly, or indirectly, it would deprive the individual, completely or in part, of the value of his product, or of the value of the use of his product. This means that the State has not the right to suppress the interest of that capital which is the product of individual's activities.

IMPOSSIBILITY OF SUCH AN ABOLITION

It seems practically impossible that the State could abolish interest of capital without suppressing at the same time the private ownership of the latter. It seems to me that such a prohibition would not work, and that in the degree in which it might work, it would deprive the owners of the value of their capital and would stop the private production of new capital, diverting to consumption and unproductive expenditures all the savings which today are supplying industry with the necessary means of production.

For instance, let us examine the effects of this prohibition on the rent of houses. The owners of houses would be obliged to give gratis to their tenants the use of their buildings, to which the tenants have no right whatsoever — an unjust transference of the value of that shelter from the owner to the tenant. Let us assume that such prohibition can be enforced, at least for the first time. But the house itself has no value apart from the shelter it affords, so that when the shelter becomes a free good, nobody will pay for the house.

Who would buy a house if he could live gratis in the house of his neighbour? Only the very rich who cannot get a suitable home gratis would think of buying a house, or of building one. At the same time, all the proprietors of houses for rent would try to sell out in order to invest their money more advantageously. — But how can they do so, were interest forbidden in all other investments? If the owner cannot sell the use of his property and he wishes to save, he will try to invest his capital in that kind of property which he can personally enjoy, like jewelry, furnitures, paintings, statues, villas, and all those objects of comfort and luxury whose use can be enjoyed without destroying its value, and which can be multiplied indefinitely according to the demand. With such an enormous offering of houses for sale and with such a negative demand, what would be the value of houses? Who will build a house, except for personal use? But this condition of things could not last: before long the competition among the tenants, resulting from the insufficient number of houses would oblige them to make presents and all kind of services to the owners in order to obtain the favor of using their houses. These services and presents, for the very reason of being indeterminate, would easily grow more burdensome to the tenants and advantageous to the owners than the abolished rents.

But in fact, this shortage of houses and this competition among the tenants resulting in services and presents to the owners, would begin from the very moment of the suppression of rents, even previous to any increase in the population; because any lessenning in the rent of houses, and *a fortiori* its total suppression, if it is not accompanied with a lessenning in the amount of money that people are willing to expend in their dwelling-

accomodations, must produce an increase in the demand for houses, just as any increase of the population would produce it. Once suppress the rent of houses, and tenants, who now do not think of having better or larger houses, simply because these are beyond their means, would immediately covet more comfortable homes and be willing to expend in presents to the owners, of those coveted houses, a part and, if necessary the whole of the money they have hitherto paid as rents. In any way, tenants would have to pay rent, like today, with the difference that the new rent would not be fixed by a legal contract and would not give them any legal right against the owners.

For the same reason, as rent of houses, all other kinds of interest would finally maintain themselves, despite the prohibition of the law, as long as there will be private ownership and private free disposal of the capital.

What, if the State should take from the private owners the free disposal of their productive capital? Apart from the injustice involved in depriving owners of the free use of their property and in transferring to others the benefits of such a use, the State should be ready to pay the value of the capital itself to all those proprietors who would like to invest it in a way that would bring them some personal advantage; otherwise this suppression of interest would be tantamount to a complete confiscation of the principal. But, as we saw, interest once abolished, everybody would try to get the value of that part of his property that he cannot enjoy, in order to invest it more advantageously. How could the State pay the value of almost all existing capital? It is evidently impossible. In the face of such a failure of the State to pay the owners of the present capital and during its per-

manent indebtedness to them, who will be willing to deposit their savings in the hands of the State? We have therefore in this case an additional reason which would stop again the formation of productive capital and would direct the savings to merely luxurious expenditures. The State would be obliged to confiscate without compensation the productive property of the present capitalists and to take on its shoulders the task of supplying society with the necessary new capital. To do this, compulsory saving and control by the State of the use of such savings would be necessary. Each one would be obliged to save a given amount of his income and to deposit it in the banks of the State, and no one could recover his money for personal use without the approbation of public officials.

We do not need to point out the abuses and tyrannies which would result in such a system; let us refer to its essential injustices. If the capital gathered in this way is entrusted to certain private directors of industry without obligation of paying interest, then these would enjoy the benefits of capital that really belongs to others; if they pay interest to the State, then the State is robbing the real owners not passing such interest to them. The same injustice would follow were these private enterprisers obliged to give the interest of capital to the public through lower prices, inasmuch as such a value of the use of private capital would not go to its owners but to all members of society. The fact is that in such a system the capital would be no longer private property, since its former owners would no longer have the right to consume it at their will, nor to enjoy the benefits of its use. Therefore we can say that it is impossible to suppress the interest of capital, without suppressing the private ownership of capital itself.

What, if all capital should be socialized, and the State should take the managing of the whole productive process, and the care of renewing and increasing means of production? First of all, this system cannot start, as it is evident, except through confiscation of all present productive capital, without possibility of compensating the owners. This would mean a general and absolute violation of the right of the producers to their product, inasmuch as most of the proprietors are the producers of their capital, or have bought, or in other legal way acquired, the producer's right. Even in such a system private capital would reappear before long, and with it, the value of its use. Where salaries necessarily differ according to each one's productivity — an absolute requirement of natural right and an indispensable condition of efficient production — some will obviously accumulate savings in a short time. They will save in order to secure future leisure, or perhaps to increase their future income, with the certainty that people will always be found willing to pay for the temporary use of houses, or of any other useful things, that they cannot, or do not wish, to buy outright. It will always be possible to obtain some kind of payment for the use of instruments of production, for there will always be men willing to hire such instruments, attracted to private enterprise by the incentive of profits and the desire of independence. For maintaining its system, the State would have to repeat periodically the confiscation of private capital, that is, should rob periodically individuals of the product of their work.

For avoiding this continuous resurrection of private capital and interest, the authority would have, either to forbid any productive use of private savings — an intolerable tyranny — or would have

to make them impossible by fixing salaries according to mere needs; that is, it would have to establish the absolute communism, which seems to be the only logical and consistent system, once the right of the producers to their full product is denied. Once ignore the sacredness of the individual, and society ceases to be a machinery to serve and protect his rights, he becomes the slave of society. He no longer works for himself, which is the prerogative of the free worker; he works for society, which is supposed to take care of the necessities of the workers, which is the characteristic of slavery.

With all political and economic powers in the hands of the public officials, tyranny and oppression of all kinds is possible and almost any resistance hopeless. But the slave system is an economic failure. Since reward is the natural incentive of work, and whenever the amount of the reward will no longer depend on the amount of the work done, men will work as little as possible. Human society cannot prosper through the negation of the right of the individual, but only through its recognition and full protection.

CHAPTER IV

JUSTICE AND WAGES

A PROBLEM OF COMMUTATIVE JUSTICE

From the study of the right of the producer to the full value of his product and consequently to the full value of the use of his product, we now proceed to study the distribution of that product when several individuals have been associated in its production. According to our previous conclusions, the product of any kind of association of workers should be distributed among them in proportion to their contribution to the common product; but the practical application of this rule offers special difficulties when some of the producers sell their contribution to the production for a fixed salary; so that we come to study the bearing of this principle of productivity in the fixing of a fair wage.

The problem of wages is a problem of commutative justice, which applies when two independent persons exchange things which belong to them separately; as when a worker gives his labor of which he is absolute owner, to a capitalist, in exchange for a given amount of money, or other goods, which are absolutely owned by the second. This is the view of St. Thomas: (1)

(1) " Dicendum quod commutatio proprie est, quando ex mutuis operibus fit aliquid alicui debitum; sicut ex hoc quod

" *It should be said that a real exchange takes place when by mutual actions something is made which is due to another; as from the fact that somebody has labored in the vineyard of someone else, the latter becomes his debtor for as much as the value of his work; and this is regulated by commutative justice. Since there is an equality in this exchange, for as much as the one gave to the other, so much ought he to receive from the latter: and for this also it is called commutative.*"

Almost all catholic writers use equivalent expressions, asserting that commutative justice requires an objective equality between the work and the salary. (1) Leo XIII says that: " La parfaite justice... réclame que le salaire réponde adéquatement au travail." (2)

Now it is quite common to treat this question as one, not of commutative, but of distributive justice. It is asserted that the capitalist is here society's pay-master, that by paying wages he is distributing the common bounty of nature, or the social product. (3) Now, that part of the common bounty of nature, that is private property, has a determinate economic value which is called the rent of land, the discussion about which is absolutely independent from the question of wages. These are questions that ought to be kept apart. One thing is to study the relations of the landowner to society, and another completly different is to study the relations between employees and em-

unus laboravit in vinea alterius, alter constituitur sibi debitor in tantum quantum valet labor ejus: *et in his dirigit commutativa justitia.* Est enim equalitas in ea commutationi quia *quantum unus dedit alteri,* debet *tantum ab eo recipere:* et propter hoc etiam commutativa dicitur." (3. Sent. 33 q. 3, a. 4, s. 5.)

(1) Polier p. 93.

(2) Aloc. 19 Sept. 1891, to the French labourers. " Acta Leonis XIII ", Vol. XI, p. 206.

(3) " Distributive Justice " pp. 365 and 371.

ployers, who need not necessarily be landowners, unless we think that the wages-contract imposes different obligations on the employer when he is a landowner from when he is not. We assume here that the employer has paid to the landowner the rent of land and consequently that he, as employer, is not distributing the bounty of nature, whose full value he gave already to the landowner through the payment of that rent. In the actual industrial process the employer, as such, is using his own private means, and exerting his own private activities according to his own private will, receiving from the community the same protection that this offers to any one else; so that he cannot be called "society's pay-master", or "distributor of the social product", any more than a merchant, a lawyer, or even a robber, could be called "society's merchant, lawyer, or robber": they all help to distribute the social product in a private way. Not even to those employers who are at the same time landowners can be attributed that office and responsibility of being, as employers, the distributors of the common bounty of nature. It is true that in expending the value that they received as a rent of land, they are in a certain measure expending the value of a mere natural bounty. So that they are distributing the bounty of nature, not only when they are paying salaries, but when they are buying any commodity, with the produce of that rent. Would any one maintain that commutative justice does not regulate the landowners purchases? Are they obliged to pay different prices according to the necessities of their clients? But even the landowners bought their lands with their own private money and under the authorization of the law, so that the rent they get from their lands is, within the present system, as much their own private property, as the wages are the

private property of the workers. Those socialistic concepts are absolutely at variance with the present individualistic organization of society. Therefore in dealing with the wages-contract, as it exists under the present order, we must apply to it the dictates of commutative justice, as was done by St. Thomas and almost all the Catholic writers.

EQUALITY BETWEEN THE WORK AND THE SALARY

Commutative justice means equality between the things exchanged and this equality cannot but mean equality in value, so that commutative justice in the wage-contract, requires equality of value between the work performed and the amount of goods or money given for it. But here stands the difficulty of determining what is the value of the work.

Fr. Antoine says: "*La stricte justice exige l'équivalence objective entre le donné et le reçu; or l'ouvrier dépense ses forces et use en partie sa vie au service du patron; il a donc le droit de recevoir une compensation qui lui permette de réparer ses forces et de conserver sa vie. Cette compensation, c'est le juste salaire minimum.*" (1)

It seems to me that what the employer receives is not the forces, nor any part of the life of the worker, but the external effect of the application of those forces and of the use of part of that life; so that the equality should be established between the value of that external effect and the value of the salary: these are the things exchanged. Fr. Antoine's assumption leads logically to inadmissible implications, some of which are openly in contradiction with his express teachings. — 1st Inasmuch as the worker expends only a part of his forces and a part of his life, strict equality of these

(1) "Economie Sociale" p. 601.

with the compensation due to the worker, would mean that the wages should correspond to the expenses of recovering only that part of the worker's forces and of maintaining only that part of his life. — 2nd. The salary really earned by the worker would be always just equal to the cost of living of the worker alone, regardless of his family; as the same author says: "*mais le travail de l'ouvrier représente la subsistance personnelle, et rien de plus*". (1) This would mean that all the wage-earners are denied even the possibility of really earning the livelihood of their family, and that whatever they receive over and above the cost of their own personal maintenance, is over and above the actual value of their labor. — 3rd The contention that the salary should be only sufficient for the restoration and preservation of the forces of the laborer, implies that the only object of the life of the worker is the service of his employer and that he is only entitled to be kept in working conditions, exactly like a beast of burden or a machine. In other words, it seems to me that, if the salary should be equal to the cost of restoring the forces and preserving the life of the worker, after a year of labor, he would find himself in the same condition as he was at the beginning of the year; so that he would have given up gratis a year of his life for the utility of those for whom he was working.—4th. The employers would have to pay for the same work different salaries, according to the needs of the workers; but this is the absolute negation of the equality between the work and the wages, since the same thing cannot be equal to two things that are unequal to each other.

We find the same inconsistency in the doctrine on wages of all those who though recognizing that equality is required by commutative justice bet-

(1) "Economie Sociale" p. 606.

ween the salary and the work performed, as the things exchanged, try to establish that equality, not between the things exchanged, but between the salary and the needs of the workers. This leads some of them to another inconsistency: some of them maintain that, when the laborer does not produce enough for covering his needs, an inferior salary would be his just compensation. M. Polier (1) is right in accusing them of having two measures—the productivity in the one case and the needs in the other. But it seems to me that he is not equally right when he accuses the Medieval Scholastic of forgetting their theory of objective equality, because they say that the value of the work performed was established by *communis aestimatio*, with regard to the needs of the worker according to his class. This does not necessarily contradict the objective equality of the exchange, inasmuch as such a value of the work performed was supposed to be the same for the worker and for the employer, *who should sell it at the same price*, plus only the value of their own work and the expenses. The Medieval theologians do not, as a rule, go so far as to analyze the ultimate basis of value. They probably assumed that the then existing differences in rank among the trades were the crystallization of the traditional appreciation by the community of the different value of their work. When therefore, there was question of estimating the value of a particular work, they looked as to a sure index to the rank of the worker. In a static society, as was that of the Midle-Ages, the traditional rank of a given class of workers, is a fair indication of the productivity of such a class.

(1) Polier p. 65—66, 58.

VALUE ADDED BY THE WORKER TO THE RAW-MATERIALS

In the exchange of personal work for money of other commodities which constitute the salary, commutative justice requires equality of value between the external product of the work and the salary. The value added to the raw-material by the work of the labourer seems to be in commutative justice the only measure of his salary.

This offers no difficulty when the worker uses his own instruments, but it becomes extremely complicated when he uses the machinery of his employer. How can we know what part of the new value of the transformed material is due to the contribution of the labourer, and what to the contribution of the machinery? Karl Marx says that the value created by the machinery is equivalent to its wear and tear during the production; while others say that it is the equivalent of the wearing, plus the interests on the capital invested in the machinery, and they deduce from this that the rest of the value added to the raw-material is the product of the worker's exertion. But none of these contentions can stand closer analysis.

It is an everyday fact that different concerns of the same industry, employing the same kind of workers, and requiring from them the same skill and exertion, obtain very different production, according to the perfection of their organization and equipment. Here we have equal work, could we say that such a difference in production corresponds exactly to differences in the wear of the machines, or to differences in the interest on the capital? The greater production of the better plant may not have any relation to the capital invested in its machinery; and we can even be sure that if new machinery would not increase

production more than what is necessary to pay the interest of its greater cost, nobody would think of adopting it in preference to the old.

Always and in all kinds of industry, it will be found that some concerns produce more per unit of capital and work, and that on account of better machinery or better organization. So that the amount of product resulting from the same unit of work may change enormously according to the perfection of the instruments of production used, not neccessarily according to their cost. Only in regard to those instruments of production that cannot themselves be reproduced indefinitely, is it true that their value is always proportional to their productivity. The value of land indeed is determined by its productivity, but not so the value of a reproducible machine, which tends to equalize its cost of production.

Just as the same amount of work will yield greater results in rich land than in poor, or when using more perfect machinery instead of a less perfect, so it is clear that such a difference in the product is not due to the work, but to the qualities of that machinery, or of that land. Consequently, the workers have no claim against that superior productivity of their work, which is due to the instruments of others.

As it will always be necessary to cultivate lands of different fertility, also it will always be necessary to operate plants and machines of different efficiency. The workers therefore in the best plants or on the richest lands cannot complain if they are paid according to the results that their work would produce, were it applied in the worst lands or with the less efficient machinery, in use at the time and place. If their work produces more in the better conditions, that more is due to those conditions, not to their work.

Only in regard to the poorest conditions in which work is employed can it be said that its productivity is equal to the value added to the raw-material, after deducting the interest of capital and the wear of the machinery.

As it is just that equal work should be equally paid, and since this would naturally result from the competition among the workers, the salary of all the workers of the same class, viz. of the same trade and of equal skill, tends necessarily to be equal to the productivity of those of that class who work in the worst economic conditions. The worker can ask no more for his work on the basis of commutative justice, since that is the measure of his real contribution to the production. This is also the normal level that economic laws tend to fix for salaries at any place and time.

CURRENT SALARIES

We saw already that the price of commodities tends to equalize its cost of production in the most inefficient concerns, of all those whose production is necessary to satisfy the demand for such commodities. But, since precisely the workers of such most inefficient concerns, just as the workers of the poorest lands, are generally the workers who labor under the worst economic conditions, the salary which counts in that cost of production to which the price of the product tends to conform, is the salary of those workers who work under the worst economic conditions. Therefore the salary of such workers measures the influence of the labor of all the other workers of the class in the formation of the price of the product; in other words, it measures the economic contribution of every one of those workers to the value of the product.

Let us remember too that speaking of ordinary

conditions, when the number of laborers who work collectively, using the same capital increases or diminishes, their productivity *per capita* must diminish or increase: If ten workers cultivate a given piece of land, they will obtain a larger amount of product, than if they were only five, but the product will not be twice as much. Accordingly, any increase in the number of workers employed by a given industry, if not accompanied with a proportional increment of the capital applied to the said industry, will diminish the productivity of each worker, and consequently his salary.

It seems that we can now deduce from the above, that the common salary of a given class of workers cannot for a long time be superior or inferior to the productivity of those individuals of the class who work in the worse conditions or in other words to the marginal productivity of that class of workers. If the salary were superior to their productivity, those marginal workers would be discharged from their position, the productivity of the remaining workers thus being increased by the diminution of their numbers. At the same time the corresponding diminution in the total production would raise the price of the product, thus increasing again the productivity of the workers. The competition of the discharged workers would at the same time tend to diminish the salary of their former companions. So that, when the salary is superior to the marginal productivity of the work, different economic forces begin to operate at the same time, for raising the productivity and for lowering the salaries. On the other hand, when the salaries are inferior to such productivity, the same forces tend to an increase of salaries and to a diminution of individual productivity: the former arising from competition between the employers

seeking for more workers, and the latter from the increase in the number of laborers that the employers would put to work with the same capital, and from the decrease in the price of the product due to the increased production.

Therefore, we can say that in normal conditions, the current salary of a given class of workers cannot vary much from their marginal productivity, which, as we saw, is the only real productivity that can be attributed to their work. We can say with Mr. Marshall (1) that "*no considerable inaccuracy is involved in the statement that in general, every worker of the same industrial rank with a normal boot-operative will be able to buy a pair of boots of any kind (after providing the cost of the material), with the wages earned by him, in about the same time as is required by such an operative to contribute a pair of that kind to the net product of his factory*".

Therefore, we can say that *current salaries* satisfy the requirements of *commutative justice*, or the equality between the things exchanged in the wages-contract. Accordingly, the employer — whose obligations in justice in regard to the employee as such, are based only on the service rendered by the latter—is not obliged in justice to pay more than the current salary, even when it happens to be inferior to a living-wage; since, as we have proved, the current salary is the equivalent of the service performed by the worker, and by *commutative justice*, nobody is obliged to give more than he receives.

UNJUST REDUCTIONS OF THE VALUE OF LABOR

Should we deduce for the foregoing that the current salary is always a just one? Certainly not,

(1) "Principles of Economics" p. 539. London 1916.

for although its injustice may not come from lack of equality in the things exchanged, it very often comes from other sources. The value of the work itself and its real productivity may be unjustly reduced. We have seen that the value of any commodity corresponds to the difficulty of acquiring it, and we can deduce that any increase in the supply of work without a proportional increase of the demand for it, must diminish the value of the work. We have seen also that, generally speaking, any increase in the number of laborers who work with a given amount of capital and land, means a diminution in the individual productivity of each one of them. But the supply of work and the number of workers employed by industry may be unjustly increased. This is done, when industry employs women and boys in a way that does not conform to the natural exigences of their sex and age. This is done, when the workmen are obliged to work for an excessive number of hours. This has been done also in different countries, where employers have produced, often through untrue promises of high salaries, an excessive emigration of workers to a given region, and have so reduced the value of work and the current salaries there to less than living-wages. The employers who may be the *responsible* authors of such unjust reductions in the productivity of the labor of their fellow men, are certainly obliged in justice to repair the damage so caused to the workers; but they have such an obligation, not because of having not paid the full value of the work, but because of being unjust damnificators of their neighbours. The workers have a strict right to be protected by Society against such damages, and are justified in using all licit means, like organization and strike, to defend themselves from such expoliation of their efforts and exertions.

THE RIGHT TO A LIVING WAGE AND THE VALUE OF LABOR

Should we deduce also from the foregoing, that the workers have not a strict right to a living wage? —Not at all. We can only deduce that such a right does not rest upon the requirements of that equality prescribed by *commutative justice;* but it may have, and actually has, other foundations no less strong.

We have already referred to the attempt of Fr. Antoine and many others, mostly Catholic writers, to maintain the contrary opinion and to establish this right to a living wage upon the requirements of equality in the contract; some more recent efforts have been made in the same direction by Mgr. Pottier (1) and Fr. Perquy (2). They say that the value of the labor cannot be inferior to living-wages, because — says Fr. Perquy —this is its cost of production, because the worker — says Mgr. Pottier — has the grave obligation to preserve his life. Indeed, the value of labor *should* never be inferior to living-wages, but whether it can be so or not, is not a question of right, but a mere question of fact, and unfortunately the economic value of labor—which is the only value that is exchanged—has, like the value of any other commodity, often been inferior to its cost of production or to a decent livelihood. Value depends, not on how men ought to appreciate things, but on how they actually appreciate them, and *commutative justice* requires the equality, not between the values that things should have, but between the values that they actually do have. The fact that labor might have a value inferior to living wages may be an unjust fact, that should not be

(1) " La Morale Catholique et les Questions Sociales d'Aujourd'hui " p. 23.
(2) " Congrès d'Economie Sociale Catholique de Liège" p.124.

allowed to exist, but still it is often a fact. The responsibility for that injustice would rest upon those who may have the power and the obligation to avoid it, but not necessarily upon those who may profit by it.

The worker has no right to oblige a given employer to pay him a living-wage, in exchange for a labor which at that particular place and time is not worthy of such a salary; but at the same time, it is also true that the worker has a strict right to the possibility of obtaining a reasonable living by a reasonable work. Therefore, the worker has the right to be guaranteed by Society, such conditions as may be necessary, in order that his work may always be worthy of a living-wage. Public Authority has the obligation to protect this right of the workers, as the rights of all the citizens, and consequently it is obliged to procure those conditions whenever this is possible.

This right to a living-wage has been strongly defended by many Catholic and non-catholic writers, and most conspicuously by Dr. Ryan. (1) They have shown that it is fundamentally unjust that such a social condition exists in which many people find themselves in the impossibility of getting, by their work, the necessary means to a human reasonable living, many others, often with a less amount of work, meanwhile enjoying all kinds of superfluities. They have consequently advocated the fixing by Authority of a minimum salary, under which the hiring of human work should not be allowed.

Indeed this is absolutely necessary, as an essential condition of justice in the distribution of wealth. But how may this prescription of *distributive justice* harmonize with the exigencies of *commutative justice*, that requires the equality

(1) " Living-Wages " and " Distributive Justice ".

between the value of the work and the value of the salary, with no relation to the needs of the parties?

It seems to us that this apparent opposition between *distributive* and *commutative justice*, is the reason why several among the strongest defenders of the right to a living-wage have been logically led to disregard *commutative justice*, to deny the traditional doctrine of equality in regard to the wages-contract, and even to deny the moral value of the title of productivity. This is also the reason why other partisans of the right to a living-wage, such as Antoine, Zigliara, Pottier, Perquy and many others, have assumed what seems to us an illogical attitude, by applying two measures in the estimation of the value of the work: in one case, the needs of the worker—when the economic value of the work is less than a living wage—and in other cases "*the value induced by the work in the product*" (1) — when this is more than the cost of a decent living for the workers. This same difficulty seems to be the strongest reason why many other writers deny the existence of a right to a living-wage.

Nevertheless, we think that, from what we have seen about the nature of value and about the causes that affect the productivity of work, we can deduce that there is no real opposition between what, in matter of salaries, is required by *commutative* and *distributive justice*, and that society can — and consequently ought — to guarantee a living-wage for all normal workers, without need of violating the necessary equality of economic value between the salary and the work performed. If Society forbids the hiring of human work at less than a minimum living-wage, prudently fixed according to the economic conditions of time and

(1) Mgr. Pottier takes p. 79, this *induced value*, as the basis to estimate the value of work, and the *needs*, on p. 23.

place, and if society provides with occupation, or takes care of by any system of insurance against unemployment, those workers who may be discharged by their employers, on account of the necessity of paying living-wages, if Society does this — and to do so is perfectly possible in normal economic conditions—the result would be, not only an increase in the salaries of many workers, but also a corresponding increase in the economic value of their work and in its real productivity.

Since the economic value of any commodity is measured by the difficulty to acquire it, if a law really increase the difficulty to acquire human work, by fixing a minimum living-wage and by providing employment with such a salary for those workers who could not obtain it from private concerns, the economic value of the labor of the whole class of those workers would have been actually increased. This does not mean that the State should have to employ all the workers of that class who were not getting living-wages before the interference of the law; inasmuch as according to what we have already seen, any diminution in the number of workers of the class employed by industry would tend to increase the individual productivity of the remaining ones. This is an everyday fact, very well known by employers, who — when for any reason are obliged to increase the salaries too much — think immediately of discharging some of the workers benefited by the increase, but not all of them; and likewise, when business does not go so well and employers are not allowed to diminish wages. So that, if the law raises the wages of a class of workers, not all of them would be discharged, but only the *marginal* ones. Perhaps some *marginal* concerns would also have to close down, thus producing a corresponding increase in the price of the product and consequently, in the

productivity of the remaining workers. It should also be noted that by the fact of being employed by Society a number of workers of that class, who were previously in private concerns, the total amount of capital, or of means of production, used by such a class of workers would have been increased, and therefore, also their individual productivity. Society would have taken some of the capital used by all other classes of workers and would have given it to be used by that class whose salary had to be improved.

It must be also remembered, in order to understand better the factibility of this protection of the worker's right to a living-wage by society, that in a country where those unjust methods to reduce the value of work, to which we referred lately, are not allowed, the current salary of the inferior class of normal workers cannot, but very seldom, be much inferior to a living-wage, if this is prudently determined according to the economical possibilities of place and time.

We think that we can finish this chapter on salaries by adducing, in support to our contention, the teaching of Leo XIII. We have already quoted him, as saying that perfect justice requires the equality between the work and the salary (1); now let us quote his strong advocacy of the worker's right to a living-wage, and remark: first, that he does not defend this right as a requirement of *commutative justice*, and second, that he says a little later that this right to living-wages should be protected by the community, by means of boards or other organizations, and also by law, if that be necessary.

The Pope says: (1)

(1) " Reapse manere in vita, commune singulis officium est, cui scelus est deesse. Hinc jus reperiendarum rerum, quibus vita sustentatur, necessario nascitur; quarum rerum

"The preservation of life is the bounden duty of one and all, and to be wanting therein is a crime. It follows that each one has a right to procure what is required in order to live; and the poor can procure it in no other way than through work and wages. Let it be then taken for granted that workman and employer should as a rule, make free agreements, and in particular should agree freely as to the wages; nevertheless there underlies a dictate of natural justice more imperious and ancient than any bargain between man and man, namely, that remuneration ought to be sufficient to support a frugal and well behaved wage-earner. If through necessity or fear of a worse evil the workman accepts harder conditions because an employer or contractor will afford him no better, he is made the victim of force and injustice."

facultatem infimo cuique non nisi quaesita labore merces suppeditat. Esto igitur, ut opifex atque herus libere in idem placitum, ac nominatim in salarii modum consentiant; subest tamen semper aliquid ex justitia naturali, idque libera paciscentium voluntate majus et antiquius, scilicet alendo opifici, frugi quidem et bene morato, haud imparem esse mercedem oportere. Quod si necessitate opifex coactus, aut mali peioris metu permotus, duriorem conditionem accipiat, quae, etiamsi nolit, accipienda sit, quod a domino vel a redemptore operum imponitur, istud quidem est subire vim, cui justitia reclamat." (Rerum Novarum.)

CONCLUSIONS ON PART II

I. The value in exchange of any useful thing is measured by and based in the difficulty to aquire it.

II. Current prices, rents, interest and salaries, in a given place and time, conform normally to the real value of the commodities and services exchanged, whenever they are the natural outcome of the existing relation between supply and demand.

III. Those producers and merchants, not responsible for, and with no influence in an artificial inflation of current prices, are justified in asking them, as the temporary value of their commodities, even when such prices may be much higher than the cost of production.

IV. Any attempt to suppress interest or rents on capital, would be a violation of the natural right of the owners to be paid for the use of their property.

V. In normal conditions, Authority must not interfere in the fixing of prices, rents and interest.

VI. Society is obliged to protect people against such inflations of prices, or rents, which would frustrate the man's natural right to a reasonable acces to the necessities of life.

VII. The employers who are not responsible for a

concerted and unjust depression of current wages, are not obliged in justice to pay more than current salaries; but those who do have such responsibility, are not only obliged to pay living-wages, but also to repair the damage so caused to the workers.

VIII. Employees are justified in refusing to work for less than a living-wage.

IX. Society is required by *distributive justice* to forbid the hiring of human work at less than a living-salary and to guarantee to every normal worker the opportunity of earning a reasonable living.

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